

EXHIBIT B

Reporter's Transcript of Proceedings, dated January 11, 2007

1 SAN DIEGO, CALIFORNIA-WEDNESDAY, JANUARY 11, 2007-10:45 A.M.

2 MR. HAMRICK: YOU AND EACH OF YOU DO SOLEMNLY SWEAR
3 OR AFFIRM THAT YOU WILL GIVE TRUE ANSWERS TO ALL QUESTIONS
4 THAT WILL BE PUT TO YOU TOUCHING ON YOUR QUALIFICATION TO
5 SERVE AS A GRAND JUROR DURING THIS SESSION OF COURT, SO HELP
6 YOU?

7 (ALL GRAND JURORS RESPOND AFFIRMATIVELY)

8 MR. HAMRICK: THANK YOU. PLEASE BE SEATED AND COME
9 TO ORDER.

10 THE COURT: LADIES AND GENTLEMEN, GOOD MORNING AND
11 WELCOME TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
12 DISTRICT OF CALIFORNIA. YOU'RE HERE TODAY IN CONNECTION WITH
13 OUR EFFORT TO IMPANEL GRAND JURIES. I KNOW ALL OF YOU HAVE
14 SEEN THE FILM ABOUT THE FUNCTION OF THE GRAND JURY. I'M GOING
15 TO TALK A LITTLE BIT MORE ABOUT THAT LATER IN MY REMARKS AND
16 MY INTERACTIONS WITH YOU TODAY.

17 WE'RE ESSENTIALLY LOOKING FOR PEOPLE WHO CAN FAIRLY
18 AND CONSCIENTIOUSLY EVALUATE A SET OF FACTS AND MAKE AN
19 IMPORTANT DECISION ABOUT WHETHER CASES SHOULD MOVE FORWARD TO
20 TRIAL. THAT'S THE FUNCTION OF THE GRAND JURY. YOU'RE TO WEED
21 OUT THE GROUNDLESS CHARGES FROM THOSE THAT HAVE MERIT,
22 ALTHOUGH ACKNOWLEDGING THAT YOU'RE NOT MAKING A FINAL DECISION
23 ON WHETHER A PERSON IS GUILTY OR NOT OF A CRIMINAL CHARGE.
24 BUT THE IDEA OF PUTTING A PERSON THROUGH A TRIAL OF ITSELF IS
25 A SIGNIFICANT RESPONSIBILITY, AND THAT'S THE RESPONSIBILITY

1 THAT WE CALL ON YOU TO FULFILL.

2 MY NAME IS LARRY BURNS. I'M THE JURY JUDGE. I'LL
3 TELL YOU A LITTLE BIT ABOUT OUR COURT.

4 WE HAVE 12 ACTIVE JUDGES HERE NOW AND FIVE SENIOR
5 JUDGES. WHEN A FEDERAL JUDGE TURNS 65 AND ASSUMING THEIR AGE
6 AND THEIR YEARS OF SERVICE ADD UP TO 80, THEY CAN GO SENIOR
7 AND WORK A REDUCED CASELOAD. BUT OUR SENIORS IN OUR VERY BUSY
8 DISTRICT WORK VERY, VERY HARD.

9 EACH OF US, EACH OF OUR JUDGES HERE, WAS APPOINTED
10 BY ONE OF THE PRESIDENTS OF THE UNITED STATES AND CONFIRMED BY
11 THE SENATE. WE HAVE A VERY BUSY, ACTIVE DISTRICT HERE. OUR
12 PROXIMITY TO THE BORDER GIVES US LOTS OF CASES. I THINK IF
13 YOU SERVE ON THE GRAND JURY OR IF YOU'VE BEEN HERE BEFORE
14 SERVING AS A TRIAL JUROR, YOU'RE AWARE THAT PEOPLE TRY TO
15 BRING THE STRANGEST THINGS ACROSS THE BORDER, A LOT OF WHICH
16 ARE PROHIBITED; PEOPLE, DRUGS, PARROTS, KNOCK-OFF CALVIN KLEIN
17 JEANS. ALL THOSE THINGS ARE NOW IMPLICATED BY THE FEDERAL
18 LAWS.

19 LET ME INTRODUCE THE CLERK OF OUR COURT,
20 MR. HAMRICK. HE'S THE THAT CALLED COURT TO ORDER.

21 WE ALSO HAVE SOME REPRESENTATIVES HERE FROM THE
22 UNITED STATES ATTORNEY'S OFFICE. THEY WORK VERY CLOSELY WITH
23 THE GRAND JURY. THEY'RE THE ONES THAT DECIDE, IN THE FIRST
24 INSTANCE, WHETHER A CASE SHOULD BE BROUGHT. IT'S SUBJECT TO
25 THE APPROVAL OF THE GRAND JURY THAT THE CASE CAN GO FORWARD.

1 IF YOU'RE CHOSEN AS A GRAND JUROR, YOU'RE GOING TO
2 BE HEARING, BY AND LARGE, CASES PRESENTED BY THE ASSISTANT
3 UNITED STATES ATTORNEYS WHO WORK IN OUR DISTRICT.

4 REPRESENTING THAT OFFICE IS MR. TODD ROBINSON. HE'S
5 A VERY FINE LAWYER. I'VE KNOWN HIM FOR YEARS. HE'S A FINE
6 TRIAL LAWYER, VERY SMART FELLOW.

7 AND [REDACTED] WHO'S BEEN WITH THE U.S.
8 ATTORNEY'S OFFICE FOR SOME TIME, ALSO, SHE'S THE GRAND JURY
9 ASSISTANT. YOU'LL BE GETTING TO KNOW HER IN WORKING WITH HER.

10 AND THEN WHOSE [REDACTED] OUR JURY
11 ADMINISTRATOR.

12 AND THEN FINALLY I THINK MOST OF YOU HAVE MET [REDACTED]

13 [REDACTED] SHE'S OUR JURY CLERK.

14 AND THEN THIS YOUNG WOMAN HERE, EVA OEMICK, SHE'S MY
15 COURT REPORTER. YOU'LL SEE HER OCCASIONALLY WHEN YOU COME
16 DOWN TO RETURN GRAND JURY INDICTMENTS. AFTER YOU DECIDE WHICH
17 CASES SHOULD GO FORWARD, USUALLY THE FOREPERSON OR THE DEPUTY
18 FOREPERSON WILL COME DOWN. SOMETIMES TO MY COURT; SOMETIMES
19 TO OTHERS. BUT THAT'S A REPORTED PROCEEDING.

20 SO WE'RE GLAD TO HAVE YOU HERE TODAY. THIS IS
21 IMPORTANT SERVICE, AND WE APPRECIATE YOU BEING HERE. THE MOST
22 FAMILIAR RESPONSE I GET FROM FOLKS CALLED IN FOR JURY SERVICE
23 OR GRAND JURY SERVICE IS "I WISH I WAS SOMEWHERE ELSE."

24 AND I UNDERSTAND THE SENTIMENT. WE ALL LEAD VERY
25 BUSY LIVES. THIS IS REALLY IMPORTANT SERVICE. IT'S LIKE

1 TRIAL JURY SERVICE. I TELL OUR TRIAL JURORS THAT IF YOU WERE
2 IN THE POSITION OF A DEFENDANT IN A CASE OR A PLAINTIFF IN A
3 CIVIL CASE OR EVEN THE UNITED STATES GOVERNMENT,
4 MR. ROBINSON'S POSITION, YOU'D WANT THE CASE TO BE DECIDED BY
5 PEOPLE WHO HAVE A STAKE IN THE COMMUNITY, PEOPLE WHO ARE
6 FAIR-MINDED, PEOPLE WHO ARE CONSCIENTIOUS. THAT'S WHAT OUR
7 JURY SYSTEM IS ABOUT. OUR GRAND JURY SYSTEM DEPENDS ON THAT
8 AS WELL. WE WANT FAIR-MINDED PEOPLE TO MAKE THESE VERY
9 IMPORTANT DECISIONS.

10 SO WHILE I ACKNOWLEDGE AND I UNDERSTAND THAT YOU
11 LEAD VERY BUSY LIVES, WE APPRECIATE THE COMMITMENT THAT YOU
12 MAKE. OUR SYSTEM DEPENDS ON IT. AT SOME POINT, IF YOU COUNT
13 ON THE SYSTEM TO GIVE YOU JUSTICE, THEN YOU MUST BE PREPARED
14 TO MAKE THIS KIND OF COMMITMENT WHEN CALLED UPON TO DO IT. SO
15 AGAIN, I APPRECIATE YOU BEING HERE.

16 THAT SAID, WE'VE TRIED TO SCREEN THOSE PEOPLE
17 PREVIOUSLY WHO, IN THEIR QUESTIONNAIRES, TOLD US THAT THEY HAD
18 INSURMOUNTABLE PROBLEMS THAT WOULD PREVENT THEM FROM SERVING.
19 MY EXPERIENCE IS THAT BETWEEN THE TIME WE GET THE
20 QUESTIONNAIRES AND THE SESSION TODAY, THE SESSION WHERE WE
21 ACTUALLY SPEAK TO PEOPLE PERSONALLY, THAT SOMETIMES THERE'S
22 SOME ADDITIONAL PROBLEMS THAT ARISE THAT WEREN'T FORESEEN AND
23 WEREN'T KNOWN AT THE TIME ALL OF YOU FILLED OUT THE
24 QUESTIONNAIRES.

25 MADAM CLERK, IF YOU'LL CALL THE FIRST 23 NAMES.

1 THE CLERK: THIS IS THE PANEL 07-1, THE WEDNESDAY
2 PANEL.

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 THE NEXT NAME HAS BEEN EXCUSED. I'LL DRAW A NEW
7 NAME.

8 NO. [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 THE NEXT NAME HAS BEEN EXCUSED. I'LL DRAW ANOTHER
14 NAME RANDOMLY.

15 NO. [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1

2

3

4

5

THE COURT: GOOD MORNING AGAIN.

6

7

YOU HAVE A COPY OF THE QUESTIONNAIRE
WITH THE BASIC BIOGRAPHICAL INFORMATION.

8

WOULD YOU TELL US ABOUT YOURSELF, PLEASE.

9

PROSPECTIVE JUROR: MY MAKE [REDACTED] I
LIVE IN [REDACTED] I'M A TEACHER. MY WIFE IS A [REDACTED] I HAVE
ONE ADULT CHILD. HE'S [REDACTED] I HAD
SOME EXPERIENCE IN THE STATE COURT. I WAS IN A TRIAL IN
NOVEMBER OR OCTOBER. YES, I CAN BE FAIR AND IMPARTIAL.

14

THE COURT: WHERE DO YOU TEACH?

15

PROSPECTIVE JUROR: [REDACTED] SCHOOL DISTRICT.

16

THE COURT: WHAT IS YOUR DISCIPLINE?

17

PROSPECTIVE JUROR: LANGUAGE, ARTS, SOCIAL

18

STUDIES.

19

THE COURT: I HAVE TWO SONS WHO [REDACTED]

20

[REDACTED] I DON'T LIVE IN [REDACTED] ANYMORE. I LIVED
THERE 24 YEARS. AND AS SOON AS THE YOUNGEST ONE GRADUATED,
TWO WEEKS LATER I MOVED CLOSER TO DOWNTOWN BECAUSE THE DRIVE
[REDACTED] WAS KILLING ME.

24

HOW LONG HAVE YOU BEEN A TEACHER?

25

PROSPECTIVE JUROR: I STARTED AT [REDACTED] AND

Case 3:07-cr-00491-BTM Document 18 Filed 07/30/2007 Page 9 of 69

8

1 I'VE BEEN AT [REDACTED] FOR 15 YEARS.

2 THE COURT: NICE TO HAVE YOU.

3 THERE'S A DIFFERENCE, OF COURSE, BETWEEN THE
4 FUNCTION OF THE GRAND JURY AND THE FUNCTION OF THE TRIAL JURY.
5 HERE THE STANDARD OF PROOF IS NOT PROOF BEYOND A REASONABLE
6 DOUBT BECAUSE THE GRAND JURY IS NOT MAKING AN ULTIMATE
7 DECISION ABOUT WHETHER SOMEONE IS GUILTY OR NOT OF THE CHARGE.
8 INSTEAD, THE GRAND JURY IS DETERMINING REALLY TWO FACTORS:
9 "DO WE HAVE A REASONABLE -- COLLECTIVELY, DO WE HAVE A
10 REASONABLE BELIEF THAT A CRIME WAS COMMITTED? AND SECOND, DO
11 WE HAVE A REASONABLE BELIEF THAT THE PERSON THAT THEY PROPOSE
12 THAT WE INDICT COMMITTED THE CRIME?"

13 IF THE ANSWER IS "YES" TO BOTH OF THOSE, THEN THE
14 CASE SHOULD MOVER FORWARD. IF THE ANSWER TO EITHER OF THE
15 QUESTIONS IS "NO," THEN THE GRAND JURY SHOULD HESITATE AND NOT
16 INDICT.

17 YOU UNDERSTAND THAT LEGAL DIFFERENCE BETWEEN GRAND
18 JURY FUNCTION AND TRIAL JURY FUNCTION?

19 PROSPECTIVE JUROR: YES, I DO.

20 THE COURT: THANK YOU, [REDACTED] I APPRECIATE
21 YOUR ANSWERS.

22 [REDACTED] TELL US ABOUT YOURSELF.

23 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I
24 LIVE IN [REDACTED] I'M A MANAGER OF IMPLEMENTATIONS FOR A
25 SOFTWARE COMPANY. I'M NOT MARRIED. I HAVE NO CHILDREN. I'VE

1 SERVED AS A FEDERAL GRAND JUROR IN '99, I BELIEVE.

2 THE COURT: HERE IN THIS DISTRICT?

3 PROSPECTIVE JUROR: YES.

4 THE COURT: YOU'RE A VETERAN. YOU KNOW ALL ABOUT
5 THIS PROCESS.

6 PROSPECTIVE JUROR: CORRECT.

7 YES, I CAN FAIR.

8 THE COURT: ARE YOU UP TO THE TASK?

9 PROSPECTIVE JUROR: YES.

10 THE COURT: I THINK IT MIGHT BE INTERESTING TO THE
11 OTHER ASSEMBLED PEOPLE WHO HAVE NOT BEEN ON A GRAND JURY
12 BEFORE, DID YOU ENJOY YOUR PRIOR SERVICE?

13 PROSPECTIVE JUROR: I DID.

14 THE COURT: INTERESTING? LEARNED A LOT OF THINGS?

15 PROSPECTIVE JUROR: YES.

16 THE COURT: MOST PEOPLE WHO'VE SERVED ON THE GRAND
17 JURY TELL ME IT'S ONE OF THE BEST LEARNING EXPERIENCES OF
18 THEIR LIFE. THEY MEET INTERESTING PEOPLE. THEY DEAL WITH
19 INTERESTING ISSUES.

20 THANK YOU. I APPRECIATE YOUR ANSWERS. WELCOME
21 BACK.

22 [REDACTED]
23 PROSPECTIVE JUROR: [REDACTED] I LIVE IN [REDACTED]
24 [REDACTED] I'M A REGISTERED NURSE. I'M MARRIED,
25 AND MY HUSBAND IS A [REDACTED] I HAVE [REDACTED] ADULT CHILD

Case 3:07-cr-00491-BTM Document 16 Filed 07/30/2007 Page 11 of 68

10

1 WHO'S IN HIS [REDACTED] I HAVE
2 EXPERIENCE AS A TRIAL JUROR IN MY MID-20'S. I COULD BE FAIR
3 IF SELECTED FOR A GRAND JURY.

4 THE COURT: YOU WERE IN YOUR MID-20'S OR YOU'VE
5 HEARD 25 CASES?

6 PROSPECTIVE JUROR: I WAS IN MY MID-20'S. A LONG
7 TIME AGO.

8 THE COURT: I ASKED [REDACTED] ABOUT THE
9 DIFFERENCE. ALL OF YOU, OF COURSE, HAVE SEEN THE ORIENTATION
10 TAPE ABOUT THE FUNCTION OF THE GRAND JURY.

11 YOU APPRECIATE THE DIFFERENCE IN THE FUNCTION
12 BETWEEN THE TWO ENTITIES, TRIAL JURIES AND GRAND JURIES?

13 PROSPECTIVE JUROR: YES.

14 THE COURT: YOU CAN CONSCIENTIOUSLY FULFILL THE JOB
15 OF BEING A GRAND JUROR SHOULD YOU BE ACCEPTED TO SIT ON THIS
16 PANEL?

17 PROSPECTIVE JUROR: YES, I CAN.

18 THE COURT: [REDACTED] GOOD MORNING.

19 PROSPECTIVE JUROR: GOOD MORNING.

20 MY NAME IS [REDACTED] I LIVE IN [REDACTED] I'M
21 RETIRED NOW SINCE JUNE OF LAST YEAR. I WAS A PRINCIPAL
22 RESEARCH TECHNICIAN FOR [REDACTED] I'VE BEEN MARRIED FOR
23 [REDACTED] YEARS. MY WIFE IS A [REDACTED] WE DON'T HAVE ANY
24 CHILDREN. AND I WAS ON A CIVIL REAL ESTATE TRIAL FOR A COUPLE
25 OF WEEKS MAYBE 10 OR 12 YEARS AGO. AND I CAN BE FAIR.

1 THE COURT: [REDACTED] AS YOU'VE HEARD ME ALLUDE TO,
2 THE GRAND JURY FUNCTION IS TO DETERMINE WHETHER THERE'S ENOUGH
3 EVIDENCE FOR A CASE TO GO FORWARD FOR A FULL-BLOWN TRIAL.
4 THAT'S A PRELIMINARY DECISION IN THE CRIMINAL JUSTICE PROCESS,
5 BUT IT'S AN IMPORTANT DECISION. SOMETIMES THE POWER TO CHARGE
6 SOMEBODY TO BRING AN INDICTMENT AGAINST SOMEBODY IS THE POWER
7 TO RUIN SOMEBODY.

8 SO WE WANT YOU TO LOOK AT THE CASES CAREFULLY AND
9 ANSWER THE TWO QUESTIONS THAT I MENTIONED TO [REDACTED]
10 "DO I HAVE A REASONABLE BELIEF THAT A FEDERAL CRIME WAS
11 COMMITTED? AND DO I HAVE A REASONABLE BELIEF, BASED ON THE
12 PRESENTATION OF EVIDENCE SO FAR, THAT THIS PERSON THEY WANT ME
13 TO INDICT HAD SOMETHING TO DO WITH THAT, EITHER COMMITTED IT
14 OR HELPED IN THE COMMISSION OF THE CRIME?"

15 CAN YOU MAKE DECISIONS SUCH AS THAT IF YOU WERE
16 IMPANELED AS A GRAND JUROR HERE?

17 PROSPECTIVE JUROR: YES.

18 THE COURT: THANK YOU.

19 [REDACTED] GOOD MORNING.

20 TELL US ABOUT YOURSELF.

21 PROSPECTIVE JUROR: I'M [REDACTED] I LIVE IN
22 [REDACTED] I WORK AS A SPEECH PATHOLOGIST. I'M NOT MARRIED. I
23 DON'T HAVE ADULT CHILDREN. I'VE BEEN ON THREE TRIAL JURIES
24 ACROSS THE STREET.

25 THE COURT: WHAT WAS YOUR MOST RECENT TRIAL JURY

Case 3:07-cr-00491-BTM Document 18 Filed 07/30/2007 Page 13 of 69

12

1 SERVICE, HOW LONG AGO?

2 PROSPECTIVE JUROR: IN THE '80S.

3 AND I COULD BE A FAIR JUROR.

4 THE COURT: YOU MAKE THAT STATEMENT MINDFUL OF THE
5 QUESTIONS THAT I'VE PUT TO THE OTHER PROSPECTIVE GRAND JURORS?

6 PROSPECTIVE JUROR: YES.

7 THE COURT: THANK YOU, [REDACTED]
8 [REDACTED] GOOD MORNING.

9 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I
10 LIVE IN [REDACTED] I'M A PRINCIPAL FOR AN ELEMENTARY SCHOOL.

11 I'M MARRIED, AND MY SPOUSE [REDACTED] I HAVE [REDACTED] ADULT

12 [REDACTED] SHE IS [REDACTED] I'VE SERVED AS A TRIAL JUROR
13 IN THE STATE COURT IN THE '80S. AND YES, I CAN BE FAIR.

14 THE COURT: DOES YOUR [REDACTED]

15 [REDACTED]

16 PROSPECTIVE JUROR: YES. SHE'S [REDACTED] Y.

17 THE COURT: [REDACTED]

18 WHAT IS THE NATURE OF HER [REDACTED]? DOES SHE [REDACTED]

19 [REDACTED]?

20 PROSPECTIVE JUROR: [REDACTED]

21 THE COURT: THANK YOU, [REDACTED]

22 [REDACTED]

23 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE

24 [REDACTED] I WORK FOR THE POST OFFICE. I'M MARRIED. MY

25 HUSBAND'S [REDACTED] MY [REDACTED] I ONLY HAVE [REDACTED] AND HE

Case 3:07-cr-00491-BTM Document 18 Filed 07/30/2007 Page 14 of 69

13

1 WORKS FOR THE [REDACTED] I HAVE NO EXPERIENCE. YES, I CAN
2 BE FAIR.

3 THE COURT: THANK YOU, [REDACTED]
4 [REDACTED]

5 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE
6 IN [REDACTED] I'M A NURSE. I'M MARRIED TO [REDACTED]
7 I HAVE [REDACTED] CHILDREN, [REDACTED] AND [REDACTED] AND I'VE NEVER HAD ANY
8 EXPERIENCE AS A TRIAL JUROR.

9 THE COURT: YOU WATCHED OUR ORIENTATION FILM THIS
10 MORNING AND HAVE IN MIND THE DISTINCTION BETWEEN THE FUNCTION
11 OF THE GRAND JURY AND THE FUNCTION OF THE TRIAL JURY?

12 PROSPECTIVE JUROR: YES.

13 THE COURT: YOU'RE PREPARED TO SERVE THE FUNCTION OF
14 A GRAND JUROR?

15 PROSPECTIVE JUROR: I'LL TRY.

16 THE COURT: THANK YOU, [REDACTED]
17 [REDACTED]

18 PROSPECTIVE JUROR: HI. MY NAME IS [REDACTED]
19 I LIVE IN [REDACTED] I'M A SERVICE FOR THE SOCIAL SECURITY
20 ADMINISTRATION. I'M NOT MARRIED, BUT I'LL BE GETTING MARRIED
21 IN APRIL. I DON'T HAVE ANY CHILDREN. I DON'T HAVE ANY
22 EXPERIENCE AS A TRIAL JUROR. AND YES, I WILL BE FAIR.

23 THE COURT: [REDACTED] THANK YOU.
24 [REDACTED]

25 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I

1 LIVE IN [REDACTED] I'M A SYSTEMS ANALYST FOR A LARGE
2 PUBLISHING COMPANY. MY WIFE IS AN [REDACTED]
3 [REDACTED] I HAVE [REDACTED] CHILDREN THAT THINK THEY'RE ADULTS, BUT
4 THE OLDEST IS REALLY [REDACTED] I'VE BEEN ON THREE SUPERIOR COURT
5 TRIALS. AND I'M SURE I CAN FAIR AS A GRAND JUROR.

6 THE COURT: [REDACTED] THE PRESENTATION OF
7 EVIDENCE TO THE GRAND JURY IS NECESSARILY ONE-SIDED. THAT'S
8 WHAT THE SYSTEM CONTEMPLATES. YOU'RE GOING TO BE HEARING ONLY
9 FROM THE PROSECUTOR. THE PROSECUTOR IS GOING TO BE PRESENTING
10 EVIDENCE IN SUPPORT OF THE PROPOSED CHARGE.

11 THERE'S A LATER OPPORTUNITY, IF AN INDICTMENT IS
12 RETURNED, FOR THE PERSON TO DEFEND HIMSELF OR HERSELF AND
13 PRESENT HIS OR HER SIDE OF THE CASE, CONFRONT THE ACCUSERS AND
14 THE WITNESSES AGAINST HIM.

15 BUT I WANT TO MAKE SURE THAT YOU'RE PREPARED FOR
16 THAT SITUATION; THAT YOU'RE GOING TO BE HEARING JUST ONE SIDE,
17 AND YOU'RE GOING TO BE ASKED TO MAKE A DECISION BASED ON THE
18 PROSECUTOR'S EVIDENCE ALONE.

19 YOU'RE PREPARED FOR THAT; RIGHT?.

20 PROSPECTIVE JUROR: I UNDERSTAND THAT.

21 THE COURT: THAT'S ONE OF THE FUNDAMENTAL
22 DIFFERENCES BETWEEN THE FULL ADVERSARY SYSTEM OF A JURY TRIAL
23 AND THEN OUR GRAND JURY PROCEEDING.

24 NOW, HAVING TOLD YOU THAT, MY EXPERIENCE IS THAT THE
25 PROSECUTORS DON'T PLAY HIDE-THE-BALL. IF THERE'S SOMETHING

~~Case 3:07-cr-00491-BTM Document 18 Filed 07/30/2007 Page 16 of 69~~

15

1 ADVERSE OR THAT CUTS AGAINST THE CHARGE, YOU'LL BE INFORMED OF
2 THAT. THEY HAVE A DUTY TO DO THAT.

3 BUT THAT'S NOT TO SAY THAT EVERY CHARGE WILL PASS
4 MUSTER. THAT'S UP TO YOU AND YOUR FELLOW GRAND JURORS.

5 UNDERSTANDING THAT THAT'S THE TASK OF THE GRAND
6 JURY, I TAKE IT YOU'RE UP TO IT?

7 PROSPECTIVE JUROR: I BELIEVE SO.

8 THE COURT: THANK YOU.

9
10 PROSPECTIVE JUROR: MY NAME IS [REDACTED]

11 I LIVE IN SAN DIEGO IN THE MISSION HILLS AREA. I'M RETIRED.
12 I WAS A CLINICAL SOCIAL WORKER. I'M SINGLE. NO CHILDREN.
13 I'VE BEEN CALLED FOR JURY SERVICE A NUMBER OF TIMES, BUT I'VE
14 NEVER ACTUALLY BEEN SELECTED AS A JUROR. CAN I BE FAIR? I'LL
15 TRY. BECAUSE OF THE NATURE OF THE WORK THAT I DID, I HAVE
16 SOME FAIRLY STRONG OPINIONS ABOUT SOME OF THE PEOPLE WHO COME
17 INTO THE LEGAL SYSTEM. BUT I WOULD TRY TO WORK WITH THAT.

18 THE COURT: WE'RE ALL PRODUCTS OF OUR EXPERIENCE.
19 WE'RE NOT GOING TO TRY TO DISABUSE YOU OF EXPERIENCES OR
20 JUDGMENTS THAT YOU HAVE. WHAT WE ASK IS THAT YOU NOT ALLOW
21 THOSE TO CONTROL INVARIABLY THE OUTCOME OF THE CASES COMING IN
22 FRONT OF YOU; THAT YOU LOOK AT THE CASES FRESH, YOU EVALUATE
23 THE CIRCUMSTANCES, LISTEN TO THE WITNESS TESTIMONY, AND THEN
24 MAKE AN INDEPENDENT JUDGMENT.

25 DO YOU THINK YOU CAN DO THAT?

~~Case 3:07-cr-00491-BTM Document 18 Filed 07/30/2007 Page 17 of 67~~

16

1 PROSPECTIVE JUROR: I'LL DO MY BEST.

2 THE COURT: IS THERE A CERTAIN CATEGORY OF CASE THAT
3 YOU THINK MIGHT BE TROUBLESOME FOR YOU TO SIT ON THAT YOU'D BE
4 INSTINCTIVELY TILTING ONE WAY IN FAVOR OF INDICTMENT OR THE
5 OTHER WAY AGAINST INDICTING JUST BECAUSE OF THE NATURE OF THE
6 CASE?

7 PROSPECTIVE JUROR: WELL, I HAVE SOME FAIRLY STRONG
8 FEELINGS REGARDING DRUG CASES. I DO NOT BELIEVE THAT ANY
9 DRUGS SHOULD BE CONSIDERED ILLEGAL, AND I THINK WE'RE SPENDING
10 A LOT OF TIME AND ENERGY PERSECUTING AND PROSECUTING CASES
11 WHERE RESOURCES SHOULD BE DIRECTED IN OTHER AREAS.

12 I ALSO HAVE STRONG FEELINGS ABOUT IMMIGRATION CASES.
13 AGAIN, I THINK WE'RE SPENDING A LOT OF TIME PERSECUTING PEOPLE
14 THAT WE SHOULD NOT BE.

15 THE COURT: WELL, LET ME TELL YOU, YOU'VE HIT ON THE
16 TWO TYPES OF CASES THAT ARE REALLY KIND OF THE STAPLE OF THE
17 WORK WE DO HERE IN THE SOUTHERN DISTRICT OF CALIFORNIA. AS I
18 MENTIONED IN MY INITIAL REMARKS, OUR PROXIMITY TO THE BORDER
19 KIND OF MAKES US A FUNNEL FOR BOTH DRUG CASES AND IMMIGRATION
20 CASES. YOU'RE GOING TO BE HEARING THOSE CASES I CAN TELL YOU
21 FOR SURE. JUST AS DAY FOLLOWS NIGHT, YOU'RE HEAR CASES LIKE
22 THAT.

23 NOW, THE QUESTION IS CAN YOU FAIRLY EVALUATE THOSE
24 CASES? JUST AS THE DEFENDANT ULTIMATELY IS ENTITLED TO A FAIR
25 TRIAL AND THE PERSON THAT'S ACCUSED IS ENTITLED TO A FAIR

Case 3:07-cr-00491-BJM Document 10 Filed 07/30/2007 Page 16 of 68

17

1 APPRAISAL OF THE EVIDENCE OF THE CASE THAT'S IN FRONT OF YOU,
2 SO, TOO, IS THE UNITED STATES ENTITLED TO A FAIR JUDGMENT. IF
3 THERE'S PROBABLE CAUSE, THEN THE CASE SHOULD GO FORWARD. I
4 WOULDN'T WANT YOU TO SAY, "WELL, YEAH, THERE'S PROBABLE CAUSE.
5 BUT I STILL DON'T LIKE WHAT OUR GOVERNMENT IS DOING. I
6 DISAGREE WITH THESE LAWS, SO I'M NOT GOING TO VOTE FOR IT TO
7 GO FORWARD." IF THAT'S YOUR FRAME OF MIND, THEN PROBABLY YOU
8 SHOULDN'T SERVE. ONLY YOU CAN TELL ME THAT.

9 PROSPECTIVE JUROR: WELL, I THINK I MAY FALL IN THAT
10 CATEGORY.

11 THE COURT: IN THE LATTER CATEGORY?

12 PROSPECTIVE JUROR: YES.

13 THE COURT: WHERE IT WOULD BE DIFFICULT FOR YOU TO
14 SUPPORT A CHARGE EVEN IF YOU THOUGHT THE EVIDENCE WARRANTED
15 IT?

16 PROSPECTIVE JUROR: YES.

17 THE COURT: I'M GOING TO EXCUSE YOU, THEN. I
18 APPRECIATE YOUR HONEST ANSWERS.

19 THE COURT: [REDACTED] DO YOU WANT TO PICK A REPLACEMENT
20 AT THIS POINT?

21 THE CLERK: YES, SIR.

22 JUROR NO. [REDACTED]

23 THE COURT: LET ME GIVE YOU A MINUTE TO GET A COPY
24 OF THE SHEET. TAKE A LOOK AT IT. I THINK WE KNOW WHO YOU
25 ARE.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[REDACTED]

PROSPECTIVE JUROR: CORRECT.

I LIVE IN [REDACTED] MY HUSBAND AND I HAVE OUR OWN BUSINESS. WE ARE ENGINEERING AND MANUFACTURING COMPONENTS FOR [REDACTED] WE'VE BEEN IN BUSINESS ABOUT [REDACTED] YEARS NOW. WE'RE DOING REALLY WELL. HE FREAKED OUT WHEN HE TOLD ME I SHOULD JUST TELL YOU I SEE GUILTY PEOPLE.

THE COURT: OH, I SAY THROUGH THE PHONY EXCUSES. YOU THINK OTHERS HAVEN'T TRIED THAT BEFORE.

PROSPECTIVE JUROR: I'M SURE THEY HAVE.

WE'VE BEEN MARRIED 31 YEARS. I HAVE TWO ADULT CHILDREN. ONE'S A [REDACTED] AND THE OTHER ONE'S A [REDACTED] [REDACTED] STUDENT AT [REDACTED] IN [REDACTED] IT'S MY FIRST COURT APPEARANCE. AND I THINK I CAN BE FAIR.

THE COURT: I THINK YOU'LL ACTUALLY ENJOY IT, AND I HOPE YOU'LL BE ABLE TO ACCOMMODATE YOUR WORK SCHEDULE HELPING YOUR HUSBAND WITH THAT.

PROSPECTIVE JUROR: I'M KIND OF CONCERNED ABOUT OUR SCHEDULE.

THE COURT: MOST PEOPLE FIND A WAY TO WORK IT OUT. WE HEAR OFTEN "WELL, I'M SELF-EMPLOYED. THIS IS GOING TO BE A TREMENDOUS FINANCIAL BURDEN."

HERE'S WHAT I'M BUFFETED BY AS THE PERSON CHARGED WITH MAKING THE DECISIONS: THE CONSTITUTION REQUIRES THAT JURIES, TRIAL JURIES AND GRAND JURIES, BE DRAWN FROM A FAIR

~~Case 3:07-cr-00491-BTM Document 18 Filed 07/30/2007 Page 20 of 69~~

19

1 AND ACCURATE CROSS-SECTION OF THE COMMUNITY. AND WHAT THE..
2 COURTS HAVE SAID OVER THE YEARS IS NO GROUP IS AUTOMATICALLY
3 EXCLUDED. YOU'VE GOT TO LOOK AT EVERYBODY. AND THE EXCUSES
4 HAVE TO BE ON A CASE-BY-CASE BASIS.

5 AS YOU CAN IMAGINE, IF I EXCUSED EVERYONE WHO HAD
6 FINANCIAL HARDSHIP OR WAS SELF-EMPLOYED, THEN WE WOULD SKEW
7 OUR JURY POOLS. WE WOULD HAVE WHOLE SEGMENTS OF OUR COMMUNITY
8 HERE THAT WERE NOT REPRESENTED, AND THAT WOULDN'T BE
9 CONSISTENT WITH THE CONSTITUTIONAL GUARANTEES.

10 AND SO I'M THE GUY AT THE FLOODGATE WITH THE BIG
11 WHEEL TRYING TO TURN IT AND MAKE THE DECISIONS. I SAY THAT
12 RELUCTANTLY BECAUSE I'M NOT UNMINDFUL AT ALL OF THE BURDEN IT
13 PLACES ON NOT ONLY SELF-EMPLOYED PEOPLE, BUT PEOPLE WITH
14 REGULAR FULL-TIME JOBS THAT ARE GOING TO BE AWAY FOR A PERIOD
15 OF TIME.

16 WE DO APPRECIATE YOUR SERVICE. IT'S IMPORTANT
17 SERVICE. YOU SAY THIS IS YOUR FIRST TIME HERE. IF YOU WERE
18 EVER HERE IN SOME OTHER CAPACITY, WITH LITIGATION OF SOME
19 TYPE, WHETHER CIVIL OR CRIMINAL, YOU WOULD WANT CONSCIENTIOUS
20 PEOPLE FROM THE COMMUNITY. THAT'S THE GUARANTEE THAT WE TRY
21 TO GIVE; IS THAT "WE'RE GOING TO GIVE YOU A JUST DECISION, AND
22 IT WILL BE A JURY OF YOUR PEERS, PEOPLE JUST LIKE YOU FROM OUR
23 COMMUNITY WHO WILL MAKE THE DECISION.. WE CAN'T CONTINUE TO
24 GIVE THAT GUARANTEE UNLESS WE HAVE PEOPLE WILLING TO SERVE.

25 I THANK YOU. I APPRECIATE THE SACRIFICE. WELCOME.

1 WE'RE GLAD TO HAVE YOU.

2 [REDACTED]
3 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I
4 LIVE IN [REDACTED] AND I'M A JANITOR. I'M MARRIED. MY
5 WIFE IS A [REDACTED] I HAVE [REDACTED] ADULT CHILDREN. MY
6 [REDACTED] IN [REDACTED] IN [REDACTED] MY [REDACTED] IS
7 WORKING [REDACTED] AN [REDACTED]
8 AND I HAVE ONCE BEEN A TRIAL JUROR ABOUT 15 YEARS AGO.

9 THE COURT: CRIMINAL OR CIVIL?

10 PROSPECTIVE JUROR: CIVIL CASE.

11 AND I COULD BE FAIR.

12 THE COURT: YOU MAKE THAT STATEMENT MINDFUL OF THE
13 QUESTIONS I'VE PUT TO OTHERS AND THE ANSWERS THAT THEY'VE
14 GIVEN?

15 PROSPECTIVE JUROR: YES.

16 THE COURT: THANK YOU.

17 [REDACTED]
18 PROSPECTIVE JUROR: [REDACTED] I LIVE IN
19 [REDACTED] I'M AN ENGINEER FOR THE [REDACTED] I
20 INSTALL AND MAINTAIN [REDACTED]
21 [REDACTED] I'M NOT MARRIED. I HAVE NO CHILDREN.
22 I HAVE NOT SERVED ON A JURY BEFORE.

23 THE COURT: ANY TYPE OF JURY?

24 PROSPECTIVE JUROR: ANY TYPE OF JURY.

25 I HOPE I CAN BE FAIR.

1 THE COURT: I THINK YOU CAN BE FAIR.

2 THE QUESTION IS JUST A TIME PROBLEM; RIGHT?

3 THE DEFENDANT: YES, SIR.

4 THE COURT: DOESN'T HAVE TO DO WITH FAIRLY --

5 PROSPECTIVE JUROR: NO, SIR.

6 THE COURT: I SPOKE TO YOU AT SIDEBAR ABOUT THAT.

7 IF IT BECOMES A PROBLEM, WE CAN DEAL WITH IT. I'LL REVISIT IT
8 AT SOME LATER TIME.

9 BUT I THINK THE EXPLANATION I GAVE TO [REDACTED] ALSO
10 WOULD APPLY IN YOUR CASE. I CAN'T JUST SUMMARILY SAY, "WELL,
11 THIS FELLOW'S GOT A TIME PROBLEM, SO WE'VE GOT TO LET HIM GO."

12 WHERE'S YOUR DUTY STATION HERE? WHERE'S YOUR
13 WORKPLACE?

14 PROSPECTIVE JUROR: IN [REDACTED]

15 THE COURT: [REDACTED] THANK YOU. I APPRECIATE
16 YOUR ANSWERS.

17 [REDACTED]

18 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I

19 LIVE IN [REDACTED]. I'M A STATISTICIAN AT [REDACTED]

20 [REDACTED] I'M SEPARATED RIGHT NOW. I HAVE TWO [REDACTED]

21 CHILDREN. I'VE BEEN ON A TRIAL JURY ON A CRIMINAL CASE AT THE
22 SUPERIOR COURT ABOUT TWO YEARS AGO. AND I CAN BE FAIR.

23 THE COURT: YOU WATCHED THE FILM AND APPRECIATE THE
24 DIFFERENCE BETWEEN THE FUNCTION OF THE GRAND JURY AND THEN
25 WHAT A CRIMINAL TRIAL JURY DOES?

Case 3:07-cr-00491-BTM Document 18 Filed 07/30/2007 Page 23 of 69

22

1 PROSPECTIVE JUROR: YES.

2 THE COURT: THANK YOU, [REDACTED]

3 I'M NOT GOING TO MAKE ANY JOKES ABOUT [REDACTED]

4 [REDACTED]

5 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I
6 LIVE IN [REDACTED] JUST EAST OF HERE. I'M A PROJECT
7 MANAGER FOR THE CITY OF [REDACTED]
8 [REDACTED] I'M MARRIED. MY WIFE'S A [REDACTED], BUT
9 SHE'S ON LEAVE RIGHT NOW RAISING [REDACTED] KIDS, [REDACTED] AND
10 [REDACTED] MONTHS. SO THEY'RE NOT ADULTS. I HAVE NO EXPERIENCE
11 SERVING ON ANY JURY OF ANY TYPE. I'VE BEEN SUMMONED. I'VE
12 BEEN EXCUSED FROM ONE OR TWO. I'VE SIMPLY NOT BEEN CALLED FOR
13 OTHERS. I BELIEVE I CAN BE FAIR.

14 THE COURT: THANK YOU.

15 [REDACTED]

16 PROSPECTIVE JUROR: [REDACTED] I LIVE IN THE
17 COMMUNITY OF [REDACTED] I DRIVE A SCHOOL FOR THE [REDACTED]
18 [REDACTED] SCHOOL DISTRICT. MY WIFE IS A [REDACTED]
19 [REDACTED] I HAVE TWO [REDACTED] CHILDREN. ONE'S A [REDACTED]
20 [REDACTED] IN [REDACTED] BACK IN [REDACTED] MY OTHER SON
21 WORKS AS A [REDACTED]

22 THE COURT: HOW LONG HAVE YOU DRIVEN A SCHOOL BUS UP
23 IN THE [REDACTED]

24 PROSPECTIVE JUROR: THREE YEARS NOW. ACTUALLY, I'VE
25 ONLY HAD TO DRIVE UP TO [REDACTED] WITH A BUS FOR ABOUT THREE

1 MONTHS. MOST OF MY STUFF HAS BEEN IN THE [REDACTED]
2 AREA. NOW I'M OVER BY [REDACTED] DRIVING. I DRIVE
3 SPECIAL NEEDS CHILDREN.

4 THE COURT: IT'S BEEN A WHILE SINCE MY KIDS WERE
5 SMALL. I TOOK THEM TO SNOW.

6 [REDACTED] IS UP IN THE MOUNTAINS; RIGHT?

7 PROSPECTIVE JUROR: JUST ABOVE [REDACTED] WHERE THE
8 FIRE WAS.

9 THE COURT: OH. I'M THINKING WAY FARTHER EAST AND
10 COLDER THAN [REDACTED]

11 YOU'RE NOT DRIVING OUT IN THE SNOW DURING THE
12 WINTER, ARE YOU?

13 PROSPECTIVE JUROR: NONE OF THE [REDACTED]
14 SCHOOLS.

15 AND I'VE NEVER BEEN ON A JURY AT ALL. I THINK I CAN
16 DO ALL THIS.

17 THE COURT: YOU HAVE NO RESERVATION ABOUT YOUR
18 ABILITY TO BE FAIR AND IMPARTIAL AND LOOK AT THE EVIDENCE AND
19 PERFORM THE FUNCTION THAT THE GRAND JURY PERFORMS.

20 PROSPECTIVE JUROR: NO, SIR.

21 THE COURT: [REDACTED]

22 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE
23 IN [REDACTED] I WORK AS A SCHOOL PSYCHOLOGIST. I'M AT THE
24 [REDACTED] SCHOOL DISTRICT. I AM MARRIED. MY HUSBAND IS A
25 [REDACTED] SO NOW HE [REDACTED] I HAVE [REDACTED]

1 ADULT STEPCHILDREN. ONE IS AN [REDACTED] AND ONE
2 IS IN [REDACTED] I SERVED AS A TRIAL JUROR IN VISTA MAYBE
3 TEN YEARS AGO NOW. AND YES, I CAN BE FAIR.

4 THE COURT: THANK YOU. I APPRECIATE YOUR ANSWERS.

5 [REDACTED]
6 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I'M
7 FROM [REDACTED] I'M A HOMEMAKER. MY HUSBAND IS A [REDACTED]
8 [REDACTED] OUR [REDACTED] I'VE NEVER BEEN SELECTED
9 FOR A JURY, ALTHOUGH I WAS CALLED. AND I THINK I CAN BE FAIR.

10 THE COURT: WERE YOU CALLED UP TO VISTA? IS THAT
11 WHERE YOU WOULD REPORT?

12 PROSPECTIVE JUROR: YES.

13 THE COURT: [REDACTED]

14 PROSPECTIVE JUROR: MAY NAME IS [REDACTED] I
15 LIVE IN [REDACTED] I'M A REAL ESTATE AGENT. NOT MARRIED. NO
16 KIDS. HAVE NOT SERVED. AND AS FAR AS BEING FAIR, IT KIND OF
17 DEPENDS UPON WHAT THE CASE IS ABOUT BECAUSE THERE IS A
18 DISPARITY BETWEEN STATE AND FEDERAL LAW.

19 THE COURT: IN WHAT REGARD?

20 PROSPECTIVE JUROR: SPECIFICALLY, MEDICAL
21 MARIJUANA.

22 THE COURT: WELL, THOSE THINGS -- THE CONSEQUENCES
23 OF YOUR DETERMINATION SHOULDN'T CONCERN YOU IN THE SENSE THAT
24 PENALTIES OR PUNISHMENT, THINGS LIKE THAT -- WE TELL TRIAL
25 JURORS, OF COURSE, THAT THEY CANNOT CONSIDER THE PUNISHMENT OR

~~Case 3:07-cr-00491-BTM Document 18 Filed 07/30/2007 Page 26 of 29~~

25

1 THE CONSEQUENCE THAT CONGRESS HAS SET FOR THESE THINGS. WE'D
2 ASK YOU TO ALSO ABIDE BY THAT. WE WANT YOU TO MAKE A
3 BUSINESS-LIKE DECISION AND LOOK AT THE FACTS AND MAKE A
4 DETERMINATION OF WHETHER THERE WAS A PROBABLE CAUSE.

5 COULD YOU DO THAT? COULD YOU PUT ASIDE STRONG
6 PERSONAL FEELINGS YOU MAY HAVE?

7 PROSPECTIVE JUROR: IT DEPENDS. I HAVE A VERY
8 STRONG OPINION ON IT. WE LIVE IN THE STATE OF CALIFORNIA, NOT
9 FEDERAL CALIFORNIA. THAT'S HOW I FEEL ABOUT IT VERY STRONGLY.

10 THE COURT: WELL, I DON'T KNOW HOW OFTEN MEDICAL
11 MARIJUANA USE CASES COME UP HERE. I DON'T HAVE A GOOD FEEL
12 FOR THAT. MY INSTINCT IS THEY PROBABLY DON'T ARISE VERY
13 OFTEN. BUT I SUPPOSE ONE OF THE SOLUTIONS WOULD BE IN A CASE
14 IMPLICATING MEDICAL USE OF MARIJUANA, YOU COULD RECUSE
15 YOURSELF FROM THAT CASE.

16 ARE YOU WILLING TO DO THAT?

17 PROSPECTIVE JUROR: SURE.

18 THE COURT: ALL OTHER CATEGORIES OF CASES YOU COULD
19 GIVE A FAIR, CONSCIENTIOUS JUDGMENT ON?

20 PROSPECTIVE JUROR: FOR THE MOST PART, BUT I ALSO
21 FEEL THAT DRUGS SHOULD BE LEGAL.

22 THE COURT: OUR LAWS ARE DIFFERENT FROM THAT. AND
23 AS YOU HEARD ME EXPLAIN TO [REDACTED] A LOT OF THE CASES
24 THAT COME THROUGH IN OUR COURT ARE DRUG CASES. YOU'LL BE
25 CALLED UPON TO EVALUATE THOSE CASES OBJECTIVELY AND THEN MAKE

1 THE TWO DETERMINATIONS THAT I STARTED OFF EXPLAINING TO
2 [REDACTED] "DO I HAVE A REASONABLE BELIEF THAT A CRIME WAS
3 COMMITTED? WHETHER I AGREE WITH WHETHER IT OUGHT TO BE A
4 CRIME OR NOT, DO I BELIEVE THAT A CRIME WAS COMMITTED AND THAT
5 THE PERSON THAT THE GOVERNMENT IS ASKING ME TO INDICT WAS
6 SOMEHOW INVOLVED IN THIS CRIME, EITHER COMMITTED IT OR HELPED
7 WITH IT?"

8 COULD YOU DO THAT IF YOU SIT AS A GRAND JUROR?

9 PROSPECTIVE JUROR: THE LAST JURY I WAS ASKED TO SIT
10 ON, I GOT EXCUSED BECAUSE OF THAT REASON.

11 THE COURT: YOU SAID YOU COULDN'T DO IT? YOUR
12 SENTIMENTS ARE SO STRONG THAT THEY WOULD IMPAIR YOUR
13 OBJECTIVITY ABOUT DRUG CASES?

14 PROSPECTIVE JUROR: I THINK RAPISTS AND MURDERERS
15 OUGHT TO GO TO JAIL, NOT PEOPLE USING DRUGS.

16 THE COURT: I THINK RAPISTS AND MURDERERS OUGHT TO
17 GO TO JAIL, TOO. IT'S NOT FOR ME AS A JUDGE TO SAY WHAT THE
18 LAW IS. WE ELECT LEGISLATORS TO DO THAT. WE'RE SORT OF AT
19 THE END OF THE PIPE ON THAT. WE'RE CHARGED WITH ENFORCING THE
20 LAWS THAT CONGRESS GIVES US.

21 I CAN TELL YOU SOMETIMES I DON'T AGREE WITH SOME OF
22 THE LEGAL DECISIONS THAT ARE INDICATED THAT I HAVE TO MAKE.
23 BUT MY ALTERNATIVE IS TO VOTE FOR SOMEONE DIFFERENT, VOTE FOR
24 SOMEONE THAT SUPPORTS THE POLICIES I SUPPORT AND GET THE LAW
25 CHANGED. IT'S NOT FOR ME TO SAY, "WELL, I DON'T LIKE IT. SO

1 I'M NOT GOING TO FOLLOW IT HERE."

2 YOU'D HAVE A SIMILAR OBLIGATION AS A GRAND JUROR
3 EVEN THOUGH YOU MIGHT HAVE TO GRIT YOUR TEETH ON SOME CASES.
4 PHILOSOPHICALLY, IF YOU WERE A MEMBER OF CONGRESS, YOU'D VOTE
5 AGAINST, FOR EXAMPLE, CRIMINALIZING MARIJUANA. I DON'T KNOW
6 IF THAT'S IT, BUT YOU'D VOTE AGAINST CRIMINALIZING SOME DRUGS.

7 THAT'S NOT WHAT YOUR PREROGATIVE IS HERE. YOUR
8 PREROGATIVE INSTEAD IS TO ACT LIKE A JUDGE AND TO SAY, "ALL
9 RIGHT. THIS IS WHAT I'VE GOT TO DEAL WITH OBJECTIVELY. DOES
10 IT SEEM TO ME THAT A CRIME WAS COMMITTED? YES. DOES IT SEEM
11 TO ME THAT THIS PERSON'S INVOLVED? IT DOES." AND THEN YOUR
12 OBLIGATION, IF YOU FIND THOSE THINGS TO BE TRUE, WOULD BE TO
13 VOTE IN FAVOR OF THE CASE GOING FORWARD.

14 I CAN UNDERSTAND IF YOU TELL ME "LOOK, I GET ALL
15 THAT, BUT I JUST CAN'T DO IT OR I WOULDN'T DO IT." I DON'T
16 KNOW WHAT YOUR FRAME OF MIND IS. YOU HAVE TO TELL ME ABOUT
17 THAT.

18 PROSPECTIVE JUROR: I'M NOT COMFORTABLE WITH IT.

19 THE COURT: DO YOU THINK YOU'D BE INCLINED TO LET
20 PEOPLE GO ON DRUG CASES EVEN THOUGH YOU WERE CONVINCED THERE
21 WAS PROBABLE CAUSE THEY COMMITTED A DRUG OFFENSE?

22 PROSPECTIVE JUROR: IT WOULD DEPEND UPON THE CASE.

23 THE COURT: IS THERE A CHANCE THAT YOU WOULD DO
24 THAT?

25 PROSPECTIVE JUROR: YES.

1 THE COURT: I APPRECIATE YOUR ANSWERS. I'LL EXCUSE
2 YOU AT THIS TIME.

3 THE CLERK: [REDACTED]

4 THE COURT: GOOD MORNING, [REDACTED]

5 PROSPECTIVE JUROR: GOOD MORNING.

6 THE COURT: LET ME GIVE YOU A MINUTE TO GET
7 ORIENTED.

8 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I
9 LIVE IN [REDACTED] I'M A CONTRACT ADMINISTRATOR FOR THE
10 STATE OF CALIFORNIA ON THEIR [REDACTED] PROJECTS.
11 I'M NOT MARRIED. I DON'T HAVE ANY CHILDREN. I HAVE
12 EXPERIENCE IN THE '80'S AS A TRIAL JUROR. AND I CAN BE
13 FAIR.

14 THE COURT: DO YOU HAVE ANYTHING TO DO WITH GETTING
15 THE TELEPHONE POLES DOWN IN MY NEIGHBORHOOD?

16 PROSPECTIVE JUROR: NO, BUT I CAN GET YOU A NUMBER
17 TO CALL.

18 THE COURT: THAT'S GOOD ENOUGH. WE'RE GOING TO KEEP
19 YOU ON THIS GRAND JURY.

20 [REDACTED]
21 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE
22 IN [REDACTED] I'M A SPECIAL ED ASSISTANT AT [REDACTED]
23 [REDACTED] SCHOOL DISTRICT. I'VE BEEN THERE FOR ABOUT [REDACTED] YEARS.
24 I'VE BEEN MARRIED FOR [REDACTED] YEARS. MY HUSBAND IS [REDACTED] HE
25 [REDACTED] I HAVE [REDACTED] ADULT CHILDREN: ONE'S A

1 [REDACTED] MY [REDACTED] BOYS WORK FOR THE [REDACTED] IN
2 [REDACTED] AND THEY WORK FOR A COMPANY WHERE THEY GO
3 INTO THE [REDACTED] AND THE [REDACTED] TO COPY OFF [REDACTED]
4 RECORDS:

5 THE COURT: THEY BOTH HAVE THE SAME JOB, SAME JOB
6 FUNCTIONS?

7 PROSPECTIVE JUROR: YES. WELL, ACTUALLY, MY OLDER
8 BOY HAD THIS JOB FOR -- HE'S BEEN WORKING FOR THE COMPANY FOR
9 A LONG TIME.

10 THE COURT: TOLD HIS BROTHER "THIS IS A GOOD GIG"?

11 PROSPECTIVE JUROR: YEAH. HIS BROTHER WAS WORKING
12 IN [REDACTED] FOR A WHILE. THEN THE JOB OPENED UP, AND MY
13 YOUNGER ONE NOW IS WORKING THERE. HE GOES ALSO ALL OVER

14 [REDACTED]

15 THE COURT: WHERE'S THE OLDER BROTHER?

16 PROSPECTIVE JUROR: THE OLDER BROTHER NOW IS IN
17 [REDACTED] THINGS WERE A LITTLE BIT BETTER FOR HIM TO GROW AND
18 BE ABLE TO BUY A HOME. SO HE'S OVER THERE WITH HIS WIFE AND
19 TWO KIDS.

20 I HAVE BEEN ON A JURY BEFORE FOR FEDERAL IN 1980.
21 MAYBE. A LONG, LONG TIME AGO. I'VE BEEN CALLED FOR SUPERIOR
22 COURT IN EL CAJON AND HERE IN SAN DIEGO.

23 THE COURT: DID YOU WATCH OUR ORIENTATION FILM THIS
24 MORNING AND APPRECIATE THE DIFFERENCE IN FUNCTIONS BETWEEN
25 GRAND JURIES AND TRIAL JURIES?

1 PROSPECTIVE JUROR: YES.

2 THE COURT: ANY REASON YOU CAN THINK OF WHY YOU
3 WOULDN'T BE FAIR AND IMPARTIAL?

4 PROSPECTIVE JUROR: NO. I CAN BE FAIR.

5 THE COURT: THANK YOU, [REDACTED]

6 [REDACTED]
7 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I COME
8 FROM [REDACTED] WHICH IS [REDACTED] I WORK FOR THE POST
9 OFFICE. I'M A MAIL CARRIER. I'M DIVORCED. I HAVE ONE ADULT
10 [REDACTED] SHE WORKS IN A [REDACTED] AND ALSO AT THE [REDACTED]
11 DOWN THERE. I'VE BEEN ON TWO TRIALS: ONE WAS A CRIMINAL,
12 SPOUSAL ABUSE; AND THE OTHER ONE WAS A CRIMINAL **.

13 THE COURT: WAS THAT OUT IN [REDACTED]

14 PROSPECTIVE JUROR: SUPERIOR COURT, YES.

15 AND YES, I CAN BE FAIR.

16 THE COURT: HOW LONG WAS YOUR DRIVE OVER TODAY?

17 PROSPECTIVE JUROR: TWO HOURS.

18 THE COURT: DID THE DESERT FLOWERS START TO BLOOM
19 YET?

20 PROSPECTIVE JUROR: NOT YET.

21 THE COURT: WHEN DOES THAT HAPPEN?

22 PROSPECTIVE JUROR: JUST ABOUT MAY, USUALLY.

23 THE COURT: WHAT TIME WOULD [REDACTED] HAVE TO BE
24 HERE ORDINARILY?

25 THE CLERK: THEY TELL YOU YOU CAN COME OVERNIGHT.

1 PROSPECTIVE JUROR: YES, I FOUND THAT OUT WHEN I GOT
2 HERE.

3 THE COURT: IF THE DRIVE'S NOT GOING TO BE A
4 PROBLEM, YOU'RE HAPPY TO SERVE?

5 PROSPECTIVE JUROR: I CAN SERVE, YES.

6 THE COURT: WE'RE HAPPY TO HAVE YOU HERE.

7 THE SOUTHERN DISTRICT OF CALIFORNIA, LADIES AND
8 GENTLEMEN, COMPRISES BOTH SAN DIEGO COUNTY -- AND MOST OF US
9 ARE FROM SAN DIEGO COUNTY -- AND ALSO IMPERIAL COUNTY. WE TRY
10 TO PULL RANDOMLY BUT SYSTEMATICALLY FROM IMPERIAL COUNTY, TOO.
11 IT'S NOT OUT OF THE ORDINARY. IT'S A LITTLE UNUSUAL THAT I'LL
12 GET MORE THAN ONE OR TWO IMPERIAL COUNTY PROSPECTIVE JURORS
13 EVEN ON A TRIAL JURY.

14 BUT WE'RE HAPPY TO HAVE YOU, TEN-GALLON HAT AND ALL.

15 [REDACTED]
16 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I
17 LIVE IN THE [REDACTED] I'M RETIRED. I'VE
18 BEEN RETIRED FOR SIX YEARS.

19 THE COURT: WHAT KIND OF WORK DID YOU DO?

20 PROSPECTIVE JUROR: I WAS IN THE PRINTING INDUSTRY
21 FOR [REDACTED] YEARS.

22 MY WIFE IS [REDACTED] WE HAVE [REDACTED] ADULT

23 CHILDREN. TWO OF THEM LIVE [REDACTED] ONE'S AN [REDACTED]

24 [REDACTED] THE OTHER IS A [REDACTED]

25 [REDACTED] AND MY OTHER [REDACTED] LIVES IN [REDACTED]

1 SHE'S A [REDACTED]

2 THE COURT: DID THE [REDACTED] SING IN THE SHOWER
3 WHEN [REDACTED] LIVED AT HOME?

4 PROSPECTIVE JUROR: [REDACTED] STILL SINGS IN THE SHOWER.

5 AND I'VE BEEN CALLED A FEW TIMES, BUT HAVE NOT
6 SERVED ON ANY JURIES. AND I CERTAINLY CAN BE FAIR.

7 THE COURT: THANK YOU, [REDACTED] WE'RE HAPPY
8 TO HAVE YOU.

9 FINALLY, [REDACTED]

10 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE
11 IN [REDACTED] I'M AN ACTIVE REAL ESTATE BROKER. MY
12 WIFE IS [REDACTED] WE HAVE [REDACTED] ADULT CHILDREN: [REDACTED] OF THEM
13 ARE MARRIED, AND ONE'S A [REDACTED] I
14 HAVE NO EXPERIENCE AS A JUROR. HOWEVER, I HAVE SERVED AS A
15 WITNESS FOR THE GRAND JURY.

16 THE COURT: YOU'VE ACTUALLY BEEN CALLED AS A WITNESS
17 BEFORE A GRAND JURY?

18 PROSPECTIVE JUROR: YES, I HAVE.

19 THE COURT: HOW LONG AGO WAS THAT?

20 PROSPECTIVE JUROR: I WOULD SAY ABOUT TEN YEARS.

21 AND YES, I CAN BE FAIR.

22 THE COURT: WELL, YOU MAY KNOW FROM YOUR EXPERIENCE
23 THAT IF YOU HAVE COUNSEL AS A WITNESS, YOUR COUNSEL DOESN'T
24 ACCOMPANY YOU IN TO THE GRAND JURY. THE HALLMARK OF THE GRAND
25 JURY IS THAT IT'S A SECRET PROCEEDING AND NECESSARILY SO.

~~Case 3:07-cr-00491-BTM Document 18 Filed 07/30/2007 Page 34 of 69~~

33

1 BECAUSE IF YOU, AS A GRAND JURY, DECIDE NO CHARGES SHOULD BE
2 BROUGHT, THEN NO ONE'S THE WORSE FOR THE WEAR. NO ONE EVER
3 KNOWS ABOUT THAT.

4 WE DO ALLOW WITNESSES TO CONSULT WITH THEIR LAWYERS,
5 BUT THEY MUST LEAVE THE GRAND JURY ROOM, CONSULT OUTSIDE WITH
6 THE LAWYER, AND THEN COME BACK IN. SO THAT'S WHAT YOU CAN
7 EXPECT IF THERE ARE WITNESSES WHO ARE REPRESENTED BY COUNSEL.

8 PROSPECTIVE JUROR: IT WAS SO SECRETIVE THAT I
9 DIDN'T EVEN KNOW WHAT I WAS THERE FOR.

10 THE COURT: I'M GOING TO TOUCH ON THAT IN MY
11 REMARKS. BUT IT'S VERY IMPORTANT THAT -- IT'S CHARACTERISTIC
12 OF THE GRAND JURY, AND YOU WILL BE UNDER LEGAL OBLIGATIONS NOT
13 TO SPEAK OF WHAT GOES ON IN FRONT OF THE GRAND JURY. THERE'S
14 A LOT OF INTEREST SERVED BY THAT SECRECY, AS I SAID.

15 ORDINARILY, EVERYTHING IS SUPPOSED TO BE
16 TRANSCRIBED. WE'RE SUPPOSED TO KNOW WHAT OUR GOVERNMENT IS
17 DOING. BUT THIS IS ONE AREA WHERE TRADITIONALLY THE COURTS
18 AND EVERYONE ELSE SAYS, "NO. WE NEED TO HAVE CONFIDENTIALITY
19 AND SECRECY HERE." I TOUCHED ON ONE OF THE REASONS WHY IT HAS
20 TO DO WITH NOT RUINING THE REPUTATIONS OF PEOPLE, FOR EXAMPLE,
21 WHO MAY BE UNDER INVESTIGATION, BUT NO CHARGES EVER RESULT.
22 SOMETIMES THE POWER TO INDICT SOMEONE CAN BE THE POWER TO RUIN
23 A REPUTATION.

24 THERE ARE A LOT OF OTHER GOOD REASONS WHY THE GRAND
25 JURY HAS TO FUNCTION SECRETLY. FIRST, IT PROMOTES YOUR

~~Case 3:07-cr-00491-BTM Document 18 Filed 07/30/2007 Page 35 of 69~~

34

1 SECURITY. PEOPLE WON'T KNOW THAT YOU'RE GRAND JURORS UNLESS
2 YOU TELL THEM. A LOT OF TIMES THE CRIMES UNDER INVESTIGATION,
3 THE GOVERNMENT IS NOT SURE YET WHETHER IT'S A CRIME. WE NEED
4 THE HELP OF THE GRAND JURY IN ASCERTAINING WHAT'S GOING ON.
5 SO THEY DON'T WANT TO TIP THEIR HAND AND SAY, "WE'RE LOOKING
6 AT SOMETHING." THEY DON'T WANT PEOPLE TO TAKE MEASURES TO
7 COVER UP CRIMINAL ACTIVITIES.

8 ON OTHER OCCASIONS, SOMEONE WHO KNOWS HE'S THE
9 OBJECT OF AN INVESTIGATION MIGHT FLEE TO A DIFFERENT COUNTRY
10 AND GET OUTSIDE THE JURISDICTION OF THE UNITED STATES WHERE
11 THEY COULDN'T BE REACHED.

12 SO ALL OF THOSE REASONS AND OTHERS PROMOTE THE
13 POLICY OF GRAND JURY SECRECY. YOU TOUCHED ON SOMETHING THAT'S
14 VERY IMPORTANT. IT WILL BE INCUMBENT UPON ALL OF YOU TO
15 MAINTAIN THE SECRECY OF THE GRAND JURY IF YOU TAKE THE OATH
16 AND SERVE AS GRAND JURORS.

17 HOW'S THE REAL ESTATE MARKET THESE DAYS, SLOW?

18 PROSPECTIVE JUROR: IT'S A LITTLE SLOW. I
19 SPECIALIZE IN INVESTMENT PROPERTIES.

20 THE COURT: SOME THINGS ARE HELPING, THOUGH; RIGHT?
21 THE MORTGAGE RATES ARE STARTING TO DROP?

22 PROSPECTIVE JUROR: THEY'VE DROPPED A LITTLE BIT.

23 THE COURT: THAT OUGHT TO HELP.

24 PROSPECTIVE JUROR: YEAH. THE MARKET'S STILL PRETTY
25 HIGH HERE IN SAN DIEGO PRICE-WISE.

Case 3:07-cr-00451-BTM Document 10

35

1 THE COURT: I READ WHERE PEOPLE ARE JUST STAYING
2 LONGER. THE SELLERS ARE NOT GIVING UP THEIR PLACES FOR LESS.
3 THEY JUST SAY, "WELL, WE'LL STICK IT OUT. WE'LL DIG IN OUR
4 HEELS AND STAY."

5 IS THAT WHAT YOU'RE EXPERIENCING, TOO?

6 PROSPECTIVE JUROR: YES, I FIND A LOT OF THAT. WHAT
7 YOU HAVE TO REALIZE IS THAT A LOT OF PEOPLE, IF THEY JUST
8 BOUGHT RECENTLY AND THEY'RE TRYING TO GET OUT OR THEY BOUGHT
9 SOME SECONDARY PROPERTY AND SO ON, THOSE ARE THE PEOPLE THAT
10 ARE HAVING PROBLEMS.

11 THE COURT: THEY'RE A LITTLE BIT UNDERWATER?

12 PROSPECTIVE JUROR: SOME OF THEM ARE, YES.

13 THE COURT: THANK YOU, [REDACTED] I APPRECIATE
14 YOUR ANSWERS.

15 LADIES AND GENTLEMEN, HAVING SPOKEN WITH ALL OF YOU
16 AND PASSED ON YOUR GENERAL QUALIFICATIONS TO SIT, IT'S NOW MY
17 RESPONSIBILITY TO SELECT TWO OF YOUR NUMBER: ONE AS A
18 FOREPERSON, THE OTHER AS A DEPUTY FOREPERSON. THE FOREPERSON
19 PRESIDES OVER THE DELIBERATIONS OF THE GRAND JURY AND ACTS AS
20 THE CONTACT WITH BOTH THE COURT AND THE U.S. ATTORNEY'S
21 OFFICE.

22 NEITHER THE FOREPERSON OR THE DEPUTY FOREPERSON HAVE
23 ANY GREATER SAY. IT'S THE DELIBERATIVE PROCESS. THE 23 OF
24 YOU ALL HAVE AN EQUAL SAY.

25 BUT I THINK, HAVING LISTENED TO YOUR ANSWERS AND

COMPUTER-AIDED TRANSCRIPTION

Case 3:07-cr-00491-BTM Document 18 Filed 07/30/2007 Page 37 of 69

36

1 EVALUATED YOUR BACKGROUNDS, IT APPEARS TO ME, [REDACTED]
2 HAVING PRIOR GRAND JURY SERVICE, THAT YOU WOULD BE A GOOD
3 PERSON TO ACT AS THE FOREPERSON OF THE GRAND JURY.

4 ARE YOU UP TO THE TASK AND WILLING TO ACCEPT THAT
5 ASSIGNMENT?

6 PROSPECTIVE JUROR: I AM.

7 THE COURT: THE COURT WOULD THEN APPOINT
8 [REDACTED] AS THE FOREPERSON OF THIS GRAND JURY.

9 [REDACTED] ARE YOU WILLING TO SERVE AS THE DEPUTY
10 FOREPERSON?

11 PROSPECTIVE JUROR: CERTAINLY.

12 THE COURT: YOU WOULD BE THE PRESIDING GRAND JUROR
13 IN THE ABSENCE OF [REDACTED]

14 THOSE ARE THE DESIGNATIONS I WOULD MAKE, THEN:
15 [REDACTED] AS FOREPERSON; [REDACTED] AS DEPUTY
16 FOREPERSON.

17 --000--

18 THE CLERK: NEXT PANEL, 07-2, THIS IS THE THURSDAY
19 PANEL.

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 THE COURT: GOOD MORNING.
18 [REDACTED]
19 PROSPECTIVE JUROR: I' [REDACTED] I LIVE [REDACTED]
20 [REDACTED] I'M A [REDACTED] FOR AN INDIAN TRIBE IN
21 [REDACTED] I'M MARRIED. MY HUSBAND IS A [REDACTED]
22 [REDACTED] I DO NOT HAVE ANY CHILDREN.
23 I HAVE NOT BEEN A JUROR BEFORE. AND YES, I CAN BE FAIR.
24 THE COURT: YOU'VE HAD THE ADVANTAGE OF SITTING
25 THROUGH ONE IMPANELMENT ALREADY. YOU HEARD THE QUESTIONS

Case 3:07-cr-00491-BTM Document 18 Filed 07/30/2007 Page 39 of 69

38

1 GENERALLY THAT I POSED TO THE OTHER PROSPECTIVE GRAND JURORS
2 ABOUT THE DIFFERENCES BETWEEN TRIAL JURIES AND GRAND JURIES
3 AND WHETHER INDIVIDUALS COULD FULFILL THAT FUNCTION.

4 WOULD YOUR ANSWERS HAVE BEEN BASICALLY THE SAME AS
5 THOSE THAT I'VE BEEN GIVEN WITH THE EXCEPTION OF THE TWO
6 PEOPLE THAT HAVE BEEN EXCUSED?

7 PROSPECTIVE JUROR: YES.

8 THE COURT: [REDACTED]

9 PROSPECTIVE JUROR: I'M [REDACTED] I LIVE IN

10 [REDACTED] I WORK FOR AN INSURANCE COMPANY [REDACTED]

11 I'M MARRIED. MY WIFE IS A [REDACTED] I

12 HAVE [REDACTED] KIDS AGE [REDACTED] AND [REDACTED] I'VE BEEN A JUROR BEFORE

13 PROBABLY TEN YEARS AGO ON KIND OF A LOW-LEVEL CRIMINAL CASE.

14 AND IN THE NAME OF FULL DISCLOSURE, I'D PROBABLY SUGGEST I'D

15 BE THE FLIPSIDE OF SOME OF THE INDIVIDUALS WHO HAVE CONVEYED

16 THEIR CONCERNS PREVIOUSLY. I HAVE A STRONG BIAS FOR THE U.S.

17 ATTORNEY, WHATEVER CASES THEY MIGHT BRING. I DON'T THINK

18 THEY'RE HERE TO WASTE OUR TIME, THE COURT'S TIME, THEIR OWN

19 TIME. I APPRECIATE THE EVIDENTIARY STANDARDS, I GUESS, MORE

20 OR LESS, AS A LAYPERSON WOULD; THAT THEY ARE CALLED UPON IN

21 ORDER TO BRING THESE CASES OR SEEK AN INDICTMENT.

22 AND THE GATEKEEPER ROLE THAT I GUESS WE'RE BEING

23 ASKED TO PLAY IS ONE THAT I'D HAVE A DIFFICULT TIME; IN ALL

24 HONESTY. I'M PROBABLY SUGGESTING THAT THE U.S. ATTORNEY'S

25 CASE WOULD BE ONE THAT I WOULD BE WILLING TO STAND IN FRONT

~~Case 3:07-cr-00491-BTM Document 18 Filed 07/30/2007 Page 40 of 69~~

39

1 OF; IN OTHER WORDS, PREVENT FROM GOING TO A JURY.

2 THE COURT: IT SOMETIMES HAPPENS THAT AT THE TIME
3 THE CASE IS INITIALLY PRESENTED TO THE U.S. ATTORNEY'S OFFICE,
4 THINGS APPEAR DIFFERENTLY THAN 10 DAYS LATER, 20 DAYS LATER
5 WHEN IT'S PRESENTED TO A GRAND JURY. THAT'S WHY THIS
6 GATEKEEPER ROLE IS VERY, VERY IMPORTANT.

7 YOU'RE NOT PART OF THE PROSECUTING ARM. YOU'RE
8 INTENDED TO BE A BUFFER INDEPENDENT OF THE U.S. ATTORNEY'S
9 OFFICE. AND THE REAL ROLE OF THE GRAND JURY IS TO MAKE SURE
10 THAT UNSUBSTANTIATED CHARGES DON'T GO FORWARD.

11 YOU'VE HEARD MY GENERAL COMMENTS. YOU HAVE AN
12 APPRECIATION ABOUT HOW AN UNSUBSTANTIATED CHARGE COULD CAUSE
13 PROBLEMS FOR SOMEONE EVEN IF THEY'RE ULTIMATELY ACQUITTED.

14 YOU APPRECIATE THAT; RIGHT?

15 PROSPECTIVE JUROR: I THINK I COULD APPRECIATE THAT,
16 YES.

17 THE COURT: AND SO WE'RE -- LOOK, I'LL BE HONEST
18 WITH YOU. THE GREAT MAJORITY OF THE CHARGES THAT THE GRAND
19 JURY PASSES ON THAT ARE PRESENTED BY THE U.S. ATTORNEY'S
20 OFFICE DO GO FORWARD. MOST OF THE TIME, THE GRAND JURY PUTS
21 ITS SEAL OF APPROVAL ON THE INITIAL DECISION MADE BY THE U.S.
22 ATTORNEY.

23 OBVIOUSLY, I WOULD SCREEN SOMEBODY OUT WHO SAYS, "I
24 DON'T CARE ABOUT THE EVIDENCE. I'M NOT GOING TO PAY ATTENTION
25 TO THE EVIDENCE. IF THE U.S. ATTORNEY SAYS IT'S GOOD, I'M

COMPUTER-AIDED TRANSCRIPTION

~~Case 3:07-cr-00491-BTM Document 18 Filed 07/30/2007 Page 41 of 69~~

40

1 GOING TO GO WITH THAT." IT DIDN'T SOUND LIKE THAT'S WHAT YOU
2 WERE SAYING. YOU WERE SAYING YOU GIVE A PRESUMPTION OF GOOD
3 FAITH TO THE U.S. ATTORNEY AND ASSUME, QUITE LOGICALLY, THAT
4 THEY'RE NOT ABOUT THE BUSINESS OF TRYING TO INDICT INNOCENT
5 PEOPLE OR PEOPLE THAT THEY BELIEVE TO BE INNOCENT OR THE
6 EVIDENCE DOESN'T SUBSTANTIATE THE CHARGES AGAINST. THAT'S
7 WELL AND GOOD.

8 YOU MUST UNDERSTAND THAT AS A MEMBER OF THE GRAND
9 JURY, YOU'RE THE ULTIMATE ARBITER. THEY DON'T HAVE THE
10 AUTHORITY TO HAVE A CASE GO FORWARD WITHOUT YOU AND FELLOW
11 GRAND JURORS' APPROVAL. I WOULD WANT YOU NOT TO JUST
12 AUTOMATICALLY DEFER TO THEM OR SURRENDER THE FUNCTION AND
13 GIVER THE INDICTMENT DECISION TO THE U.S. ATTORNEY. YOU HAVE
14 TO MAKE THAT INDEPENDENTLY.

15 YOU'RE WILLING TO DO THAT IF YOU'RE RETAINED HERE?

16 PROSPECTIVE JUROR: I'M NOT A PERSON THAT THINKS OF
17 ANYBODY IN THE BACK OF A POLICE CAR AS NECESSARILY GUILTY, AND
18 I WOULD DO MY BEST TO GO AHEAD AND BE OBJECTIVE. BUT AGAIN,
19 JUST IN THE NAME OF FULL DISCLOSURE, I FELT LIKE I SHOULD LET
20 YOU KNOW THAT I HAVE A VERY STRONG PRESUMPTION WITH RESPECT TO
21 ANY DEFENDANT THAT WOULD BE BROUGHT IN FRONT OF US.

22 THE COURT: I UNDERSTAND WHAT YOU'RE SAYING. LET ME
23 TELL YOU THE PROCESS WILL WORK MECHANICALLY. THEY'RE GOING TO
24 CALL WITNESSES. AND WHAT THEY'RE GOING TO ASK YOU TO DO IS
25 EVALUATE THE TESTIMONY YOU HEAR FROM WITNESSES.

Case 3:07-cr-00491-BTM Document 18 Filed 07/30/2007 Page 42 of 69

41

1 BEFORE YOU REACH A POINT WHERE YOU VOTE ON ANY
2 INDICTMENT, THE U.S. ATTORNEY AND THE STENOGRAPHER LEAVE. THE
3 ONLY PEOPLE LEFT WHEN THE VOTE IS TAKEN ARE THE GRAND JURORS
4 THEMSELVES. THAT'S THE WAY THE PROCESS IS GOING TO WORK.

5 YOU'RE GOING TO HAVE TO SAY EITHER "WELL, IT HAS THE
6 RING OF TRUTH TO ME, AND I THINK IT HAPPENED THE WAY IT'S
7 BEING SUGGESTED HERE. AT LEAST I'M CONVINCED ENOUGH TO LET
8 THE CASE GO FORWARD" OR "THINGS JUST DON'T HAPPEN LIKE THAT IN
9 MY EXPERIENCE, AND I THINK THIS SOUNDS CRAZY TO ME. I WANT
10 EITHER MORE EVIDENCE OR I'M NOT CONVINCED BY WHAT'S BEEN
11 PRESENTED AND I'M NOT GOING TO LET IT GO FORWARD."

12 CAN YOU MAKE AN OBJECTIVE ON FACTS LIKE THE ONES
13 I'VE JUST DESCRIBED?

14 PROSPECTIVE JUROR: I WOULD DO MY BEST TO DO THAT.
15 I CERTAINLY WOULD WANT ME SITTING ON A GRAND JURY IF I WERE A
16 DEFENDANT COMING BEFORE THIS GRAND JURY. HAVING SAID THAT, I
17 WOULD DO MY BEST. I HAVE TO ADMIT TO A STRONG BIAS IN FAVOR
18 OF THE U.S. ATTORNEY THAT I'M NOT SURE I COULD OVERCOME.

19 THE COURT: ALL I'M TRYING TO GET AT IS WHETHER
20 YOU'RE GOING TO AUTOMATICALLY VOTE TO INDICT IRRESPECTIVE OF
21 THE FACTS.

22 A FEW YEARS AGO, I IMPANELED A FELLOW HERE THAT WAS
23 A SERGEANT ON THE SHERIFF'S DEPARTMENT. AND YEARS AGO WHEN I
24 WAS A PROSECUTOR, I WORKED WITH HIM. HE WAS ALL ABOUT
25 ARRESTING AND PROSECUTING PEOPLE. BUT WHEN HE GOT HERE, HE

~~Case 3:07-cr-00491-BTM Document 18 Filed 07/30/2007 Page 43 of 69~~

42

1 SAID, "LOOK, I UNDERSTAND THAT THIS IS A DIFFERENT FUNCTION.
2 I CAN PERFORM THAT FUNCTION." HE SERVED FAITHFULLY AND WELL
3 FOR A NUMBER OF -- OVER A YEAR, I THINK. 18 MONTHS, MAYBE.
4 HE EVENTUALLY GOT A PROMOTION, SO WE RELIEVED HIM FROM THE
5 GRAND JURY SERVICE.

6 BUT, YOU KNOW, HE TOOK OFF ONE HAT AND ONE UNIFORM
7 AND PUT ON A DIFFERENT HAT ON THE DAYS HE REPORTED TO THE
8 GRAND JURY. HE WAS A POLICEMAN. HE'D BEEN INVOLVED IN
9 PROSECUTING CASES. BUT HE UNDERSTOOD THAT THE FUNCTION HE WAS
10 PERFORMING HERE WAS DIFFERENT, THAT IT REQUIRED HIM TO
11 INDEPENDENTLY AND OBJECTIVELY ANALYZE CASES AND ASSURED ME
12 THAT HE COULD DO THAT, THAT HE WOULD NOT AUTOMATICALLY VOTE TO
13 INDICT JUST BECAUSE THE U.S. ATTORNEY SAID SO.

14 AGAIN, I DON'T WANT TO PUT WORDS IN YOUR MOUTH. BUT
15 I DON'T HEAR YOU SAYING THAT THAT'S THE EXTREME POSITION THAT
16 YOU HAVE. I HEAR YOU SAYING INSTEAD THAT COMMON SENSE AND
17 YOUR EXPERIENCE TELLS YOU THE U.S. ATTORNEY'S NOT GOING TO
18 WASTE TIME ON CASES THAT LACK MERIT. THE CONSCIENTIOUS PEOPLE
19 WHO WORK FOR THE U.S. ATTORNEY'S OFFICE AREN'T GOING TO TRY TO
20 TRUMP UP PHONY CHARGES AGAINST PEOPLE.

21 MY ANECDOTAL EXPERIENCE SUPPORTS THAT, TOO. THAT
22 DOESN'T MEAN THAT EVERY CASE THAT COMES IN FRONT OF ME I SAY,
23 "WELL, THE U.S. ATTORNEY'S ON THIS. THE PERSON MUST BE
24 GUILTY." I CAN'T DO THAT. I LOOK AT THE CASES STAND-ALONE,
25 INDEPENDENT, AND I EVALUATE THE FACTS. I DO WHAT I'M CHARGED

1 WITH DOING, WHICH IS MAKING A DECISION BASED ON THE EVIDENCE
2 THAT'S PRESENTED.

3 SO THAT'S THE QUESTION I HAVE FOR YOU. I CAN
4 UNDERSTAND THE DEFERENCE TO THE U.S. ATTORNEY. AND FRANKLY, I
5 AGREE WITH THE THINGS THAT YOU'RE SAYING. THEY MAKE SENSE TO
6 ME. BUT AT THE END OF THE DAY, YOUR OBLIGATION IS STILL TO
7 LOOK AT THESE CASES INDEPENDENTLY AND FORM AN INDEPENDENT
8 CONSCIENTIOUS BUSINESS-LIKE JUDGMENT ON THE TWO QUESTIONS THAT
9 I'VE MENTIONED EARLIER: DO I HAVE A REASONABLE BELIEF THAT A
10 CRIME WAS COMMITTED? DO I HAVE A REASONABLE BELIEF THAT THE
11 PERSON TO BE CHARGED COMMITTED IT OR HELPED COMMIT IT?

12 CAN YOU DO THAT?

13 PROSPECTIVE JUROR: AGAIN, I WOULD DO MY BEST TO DO
14 THAT. BUT I DO BRING A VERY, VERY STRONG BIAS. I BELIEVE
15 THAT, FOR EXAMPLE, THE U.S. ATTORNEY WOULD HAVE OTHER FACTS
16 THAT WOULD RISE TO LEVEL THAT THEY'D BE ABLE TO PRESENT TO US
17 THAT WOULD BEAR ON THE TRIAL. I WOULD LOOK AT THE CASE AND
18 PRESUME AND BELIEVE THAT THERE ARE OTHER FACTS OUT THERE THAT
19 AREN'T PRESENTED TO US THAT WOULD ALSO BEAR ON TAKING THE CASE
20 TO TRIAL. I'D HAVE A VERY DIFFICULT TIME.

21 THE COURT: YOU WOULDN'T BE ABLE TO DO THAT. WE
22 WOULDN'T WANT YOU TO SPECULATE THAT THERE'S OTHER FACTS THAT
23 HAVEN'T BEEN PRESENTED TO YOU. YOU HAVE TO MAKE A DECISION
24 BASED ON WHAT'S BEEN PRESENTED.

25 BUT LOOK, I CAN TELL YOU I IMAGINE THERE'S PEOPLE IN

Case 3:08-cr-00373-JM Document 8-5 Filed 03/14/2008 Page 44 of 68

44

1 THE U.S. ATTORNEY'S OFFICE THAT DISAGREE WITH ONE ANOTHER
2 ABOUT THE MERITORIOUSNESS OF A CASE OR WHETHER A CASE CAN BE
3 WON AT A JURY TRIAL.

4 IS THAT RIGHT, MR. ROBINSON?

5 MR. ROBINSON: ON OCCASION, YOUR HONOR. NOT VERY
6 OFTEN.

7 THE COURT: IT COMES UP EVEN IN AN OFFICE WITH
8 PEOPLE CHARGED WITH THE SAME FUNCTION. I DON'T WANT TO BEAT
9 YOU UP ON THIS, [REDACTED] I'M EQUALLY CONCERNED WITH
-10 SOMEBODY WHO WOULD SAY, "I'M GOING TO AUTOMATICALLY DROP THE
11 TRAP DOOR ON ANYBODY THE U.S ATTORNEY ASKS." I WOULDN'T WANT
12 YOU TO DO THAT. IF YOU THINK THERE'S A POSSIBILITY YOU'LL DO
13 THAT, THEN I'D BE INCLINED TO EXCUSE YOU.

14 PROSPECTIVE JUROR: I THINK THAT THERE'S A
15 POSSIBILITY I WOULD BE INCLINED TO DO THAT.

16 THE COURT: I'M GOING TO EXCUSE YOU, THEN. THANK
17 YOU.. I APPRECIATE YOUR ANSWERS.

18 LADIES AND GENTLEMEN, IF YOU'LL GIVE ME JUST A SHORT
19 PAUSE. I'M GOING TO RECESS THIS PROCEEDING. I HAVE A JURY
20 TRIAL OUT. THE JURY HAS SENT A QUESTION. I'M GOING TO
21 DISCUSS HOW TO ANSWER THE QUESTION WITH COUNSEL. YOU'RE ALL
22 WELCOME TO STAY AND LISTEN TO THIS. WE'LL BE IN RECESS
23 MOMENTARILY.

24 ---000---

25 THE COURT: NOW BACK TO THE GRAND JURY IMPANELMENT.

1 AND WE WERE ABOUT TO CALL A REPLACEMENT FOR

2 [REDACTED]

3 THE CLERK: [REDACTED]

4 THE COURT: GOOD MORNING, [REDACTED]

5 PROSPECTIVE JUROR: GOOD MORNING. MY NAME IS

6 [REDACTED] I LIVE IN [REDACTED]

7 I'M RETIRED. MARRIED FOR [REDACTED] YEARS.

8 THE COURT: GOOD FOR YOU. YOU KNOW WHAT THEY SAY
9 ABOUT THAT. THE REASON THAT COUPLES CAN STICK TOGETHER THAT
10 LONG, ALL THOSE YEARS YOU'VE BOTH BEEN IN LOVE WITH THE SAME
11 MAN.

12 PROSPECTIVE JUROR: MY HUSBAND [REDACTED]

13 [REDACTED]

14 THE COURT: [REDACTED]

15 PROSPECTIVE JUROR: AND HE'S BEEN [REDACTED]

16 [REDACTED]

17 THE COURT: HE'S AN ALUMNUS OF THE [REDACTED]

18 [REDACTED] HE WENT TO [REDACTED]

19 PROSPECTIVE JUROR: I WENT TO [REDACTED] COLLEGE.

20 THE COURT: I'M A GRADUATE OF PT. LOMA COLLEGE.

21 PROBABLY A LITTLE BEFORE YOU.

22 PROSPECTIVE JUROR: I DON'T THINK SO.

23 I HAVE [REDACTED] ADULT CHILDREN. MY [REDACTED] WORKS FOR

24 [REDACTED] SHE'S IN [REDACTED]

25 [REDACTED] ONE [REDACTED] WORKS WITH [REDACTED] AND I HAVE A [REDACTED] WHO

Case 3:07-cr-00491-BTM Document 18 Filed 07/30/2007 Page 47 of 69

46

1 WORKS FOR [REDACTED]

2 THE COURT: IS HE AN [REDACTED]

3 PROSPECTIVE JUROR: [REDACTED] HE WORKS FOR THE

4 [REDACTED]

5 I'VE BEEN ON TWO TRIALS: ONE WAS A MUNICIPAL COURT
6 TRIAL. IT WASN'T CRIMINAL. MONEY WAS INVOLVED. AND THE
7 OTHER ONE WAS A CRIMINAL. AND THE FIRST ONE WAS IN THE '80'S
8 SOMETIME. THE LAST ONE WAS PROBABLY TEN YEARS AGO. AND YES,
9 I CAN BE FAIR.

10 THE COURT: HOW'S THE [REDACTED] GOING.

11 PROSPECTIVE JUROR: VERY WELL.

12 THE COURT: WHEN I WAS STILL A COLLEGE STUDENT, WE
13 HAD EMBARKED UPON A SPEAKERS PROGRAM. I GOT TOGETHER WITH
14 [REDACTED] AT [REDACTED] AND WE MADE AN ARRANGEMENT
15 WHERE THE SPEAKERS WOULD COME. AND THESE WERE [REDACTED]
16 THE [REDACTED] DRAWS IN PEOPLE OF STATURE THAT HAVE SOMETHING
17 IMPORTANT TO SAY.

18 WE USED TO HAVE THEM STAY AT THE [REDACTED] AND THE
19 [REDACTED] SAID THAT "IF THEY'LL POSE FOR A PICTURE HERE AT THE
20 [REDACTED] THEN ALL THE ACCOMMODATIONS ARE ON US," WHICH WAS A
21 GREAT ACCOMMODATION FOR OUR LITTLE TINY SPEAKERS PROGRAM. BUT
22 THEY WOULD SPEAK AT THE COLLEGE THE NIGHT BEFORE BACK IN 1976,
23 AND THEN THEY'D GO TO [REDACTED] THE NEXT DAY.

24 SO I HAVE FOND MEMORIES OF THAT. PLEASE GIVE [REDACTED]
25 [REDACTED] MY REGARDS.

1 PROSPECTIVE JUROR: I WILL.

2 THE COURT: [REDACTED]

3 PROSPECTIVE JUROR: I'M [REDACTED] I LIVE IN

4 [REDACTED] YEARS IN THE NAVY AS A NAVAL AVIATOR.

5 28 YEARS IN INDUSTRY, IN R&D, DEFENSE INDUSTRY. I'M MARRIED.

6 MY WIFE IS [REDACTED] SHE DID [REDACTED] ADULT

7 CHILDREN, ALL OVER 40: [REDACTED] OF THEM PRODUCED CHILDREN FOR A

8 LIVING, I THINK. MY DAUGHTER IS [REDACTED] IN [REDACTED] I HAVE A [REDACTED]

9 UP IN THE BAY AREA WHO'S IN [REDACTED] AND ONE [REDACTED]

10 [REDACTED] IN [REDACTED] WHO DOES [REDACTED] FOR [REDACTED]

11 [REDACTED] ONE'S A [REDACTED] WHO [REDACTED] AT

12 [REDACTED] AND [REDACTED] THE [REDACTED] I

13 HAVE BEEN SELECTED AND BOUNCED OFF A NUMBER OF FEDERAL AND

14 STATE JURIES, BUT I DID SERVE ON ONE CIVIL CASE IN THE

15 SUPERIOR COURT. I UNDERSTAND THE DISTINCTION BETWEEN THAT

16 WORK AND THE GRAND JURY.

17 THE COURT: THE BASIS FOR BOUNCING YOU, WERE YOU PRO

18 PROSECUTION OR PRO DEFENSE?

19 PROSPECTIVE JUROR: I THINK HALF THE TIME IT WAS

20 JUST THE MILITARY EXPERIENCE. THE STORY IS IN COURT MARTIAL,

21 IF IT WEREN'T TRUE, THEY WOULDN'T HAVE CHARGED THEM TYPE OF

22 THING.

23 THE COURT: YOU HEARD [REDACTED] HE ADHERED TO THAT

24 KIND OF BELIEF IN THIS CIVILIAN PROCEEDING.

25 YOU'RE NOT OF THAT FRAME OF MIND?

Case 3:07-cr-00491-BTM Document 18 Filed 07/30/2007 Page 49 of 69

48

1 PROSPECTIVE JUROR: NO.

2 THE COURT: IT'S UNFAIR TO ASK YOU WHY YOU WERE
3 BOUNCED. I'D HAVE TO ASK THE LAWYERS. WHEN WE PICK TRIAL
4 JURIES A LOT OF TIME, SOME PEOPLE -- I TALK TO PEOPLE LIKE MY
5 NEIGHBORS AND ALL. THEY SAY, "THEY BOUNCED ME OFF." THEY'RE
6 UPSET ABOUT IT. AND I TRY TO ASSUAGE THEM BY SAYING, "LOOK,
7 LET ME TELL YOU SOMETHING." AND THIS IS IN A TRIAL JURY
8 CONTEXT. "IT REALLY SAYS MORE ABOUT THE LAWYER THAN IT DOES
9 ABOUT YOU. BECAUSE LAWYERS HAVE THESE IDEAS OF WHO THEY WANT
10 ON A JURY OR WHAT THE COMPOSITION OF THE JURY OUGHT TO BE."

11 EVA'S HEARD ME TELL THIS STORY BEFORE. WHEN I WAS A
12 YOUNG LAWYER TRYING CASES JUST STARTING OUT, MY RULE OF THUMB
13 AS TO THE TEN CHALLENGES I HAD WAS NO ONE YOUNGER THAN I AM.
14 IF THEY'RE YOUNGER THAN I AM, THEY HAVEN'T HAD TO MAKE HARD
15 DECISIONS. THEY DON'T HAVE A SUFFICIENT STAKE IN THE
16 COMMUNITY. I COULD RATTLE OFF THREE OR FOUR JUSTIFICATIONS
17 FOR IT.

18 THE TRUTH OF THE MATTER IS I PROBABLY BOUNCED A LOT
19 OF PEOPLE THAT WOULD HAVE BEEN FINE. IT REALLY ILLUSTRATES
20 THE POINT THAT IT SAYS MORE ABOUT THE LAWYER THAN IT SAYS
21 ABOUT THE PERSON BEING BOUNCED.

22 THANK YOU, [REDACTED] I APPRECIATE YOUR ANSWERS.

23

24 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I
25 LIVE IN [REDACTED] I'M A PRODUCTION SCHEDULER. I'M

1 MARRIED. MY WIFE [REDACTED] I HAVE [REDACTED]
2 BOYS FROM [REDACTED] TO [REDACTED]

3 THE COURT: YOU POOR SOUL.

4 PROSPECTIVE JUROR: I HAVE NO TRIAL EXPERIENCE, AND
5 I COULD BE FAIR.

6 THE COURT: MY GOODNESS.

7 WHAT'S THE AGE SPAN BETWEEN YOUR BOYS?

8 PROSPECTIVE JUROR: FROM [REDACTED] TO [REDACTED] THEY KEEP ME VERY
9 BUSY.

10 THE COURT: I RAISED TWO THAT WERE TWO YEARS APART,
11 AND THAT KEPT ME RUNNING ALL THE TIME.

12 YOU HAVE [REDACTED] HUH?

13 PROSPECTIVE JUROR: WE TRIED FOR A GIRL, AND IT
14 NEVER WORKED.

15 THE COURT: DO YOU HAVE BROTHERS AND SISTERS?

16 PROSPECTIVE JUROR: I HAVE ANOTHER BROTHER AND TWO
17 SISTERS.

18 THE COURT: HIGH INCIDENCE OF BOYS IN YOUR FAMILY?

19 PROSPECTIVE JUROR: VERY MUCH.

20 THE COURT: DID YOUR MOTHER HAVE A LOT OF BOYS, TOO?

21 PROSPECTIVE JUROR: MY SISTER HAS [REDACTED] BUT MY
22 COUSINS, IT'S LIKE [REDACTED] BOYS AND [REDACTED] GIRLS.

23 THE COURT: IT MUST BE SOMETHING IN ONE'S GENETIC
24 CODE. WE HAVE TO ASK THE DOCTOR, THE GENETICIST, ABOUT IT.

25 MY FAMILY TREE RUNS THE SAME WAY, ALMOST ALL BOYS. ALL OF US

Case 3:07-cr-00491-BTM Document 18 Filed 07/30/2007 Page 51 of 69

50

1 KNOCK OUT BOYS. I DIDN'T KEEP GOING.

2 PROSPECTIVE JUROR: I'M DONE.

3 THE COURT: THANK YOU, [REDACTED]

4 [REDACTED]
5 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE

6 IN [REDACTED] I'M A REGISTERED NURSE. I'M MARRIED.

7 WE HAVE [REDACTED] ADULT CHILDREN. MY HUSBAND WORKS FOR [REDACTED]

8 [REDACTED] HE'S A [REDACTED]

9 [REDACTED] ONE [REDACTED] IS A [REDACTED] WHO WORKS

10 FOR [REDACTED] A [REDACTED] IS [REDACTED] AND ANOTHER [REDACTED] IS

11 AN [REDACTED] AND ONE [REDACTED] IS A [REDACTED]

12 [REDACTED] I HAVE NO EXPERIENCE AS A JUROR. AND I THINK I

13 CAN BE FAIR.

14 THE COURT: [REDACTED] YOU'RE GOING TO HEAR CASES,

15 I'M SURE, INVOLVING AGENTS [REDACTED]

16 YOU SAID YOUR OTHER SON IS A [REDACTED]

17 PROSPECTIVE JUROR: HE'S AN [REDACTED]

18 THE COURT: ONE'S AN [REDACTED] AND THE OTHER

19 IS.

20 PROSPECTIVE JUROR: A [REDACTED]

21 THE COURT: I THOUGHT YOU HAD TWO [REDACTED]

22 [REDACTED]

23 JUST ONE?

24 PROSPECTIVE JUROR: MY HUSBAND WORKS FOR [REDACTED] AND

25 [REDACTED]

1 THE COURT: YOU'RE GOING TO BE HEARING CASES FROM

2 [REDACTED] AND [REDACTED]

3 CAN YOU BE OBJECTIVE ABOUT THOSE CASES? CAN YOU
4 LISTEN TO THE FACTS AND MAKE A STAND-ALONE DECISION ON EACH
5 CASE WITHOUT INSTINCTIVELY SAYING, "WELL, THEY WORK FOR THE
6 [REDACTED] AS MY SON OR MY HUSBAND."

7 PROSPECTIVE JUROR: I THINK I CAN BE FAIR.

8 THE COURT: THAT WOULD BE YOUR OBLIGATION. YOU'RE
9 NOT AUTOMATICALLY DISQUALIFIED. AS YOU HEARD ME SAY, WE HAD A
10 SERGEANT ON THE SHERIFF'S DEPARTMENT THAT WAS SERVING ON ONE
11 OF OUR GRAND JURIES. SO IT'S NOT AUTOMATICALLY DISQUALIFYING.
12 BUT YOU HAVE TO BE ABLE TO ASSURE ME THAT "I'LL LOOK AT THESE
13 CASES INDEPENDENTLY. I UNDERSTAND THE IMPORTANCE OF ACTING AS
14 A BUFFER BETWEEN THE GOVERNMENT'S POWER TO CHARGE SOMEONE WITH
15 A CRIME AND THEN BRINGING THEM TO TRIAL. AND I'LL FULFILL
16 THAT FUNCTION CONSCIENTIOUSLY."

17 YOU CAN DO THAT?

18 PROSPECTIVE JUROR: I CAN DO THAT.

19 THE COURT: THANK YOU.

20 [REDACTED]

21 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE
22 IN [REDACTED] I'M A TRAFFIC ENGINEER WITH THE
23 CITY OF [REDACTED]

24 THE COURT: MAYBE YOU CAN GET THOSE TELEPHONE POLES
25 DOWN. I HAVE A BIG POLE RIGHT ON THE LEFT SIDE. I JUST READ

1 IN THE PAPER THAT WE'RE GOING TO PAY MORE FOR OUR TELEPHONE
2 BILLS SO THAT THEY CAN TAKE ALL THESE POLES DOWN, AND I
3 EXPECTED TO HEAR THAT CHAINSAWS THE NEXT MORNING. YOU CAN BET
4 WHEN THE NEXT BILL COMES, I'M GOING TO HAVE THE ASSESSMENT.

5 YOU DON'T KNOW ANYTHING ABOUT THAT?

6 PROSPECTIVE JUROR: THE PEOPLE IN THE UTILITIES
7 PROGRAM KNOW.

8 I'M NOT MARRIED.. I DON'T HAVE ANY CHILDREN. I WAS
9 JUST ON A CRIMINAL CASE IN THE SUPERIOR COURT JUST LAST MONTH.
10 SO I'M GETTING HIT AGAIN HERE. AND I UNDERSTAND THE
11 DIFFERENCE BETWEEN TRIAL AND --

12 THE COURT: I WAS GOING TO SAY, YOU MUST BE
13 REPORTING EARLY AND OFTEN IF YOU'VE BEEN CALLED FOR BOTH STATE
14 AND FEDERAL SERVICE AT THE SAME TIME.

15 PROSPECTIVE JUROR: I CAN BE FAIR.

16 THE COURT: THANK YOU, [REDACTED]

17 [REDACTED]
18 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE

19 IN [REDACTED] I'M AN INVESTIGATOR AND HOUSING COORDINATOR

20 FOR THE [REDACTED] I'M

21 MARRIED FOR 12 YEARS. MY HUSBAND IS [REDACTED] WE

22 DON'T HAVE CHILDREN BY CHOICE. I DON'T HAVE ANY EXPERIENCE IN

23 THE COURT SYSTEM. I CAN BE FAIR. IT WOULD BE AN HONOR,

24 SIR.

25 THE COURT: THANK YOU. I APPRECIATE YOUR ANSWERS.

Case 3:07-cr-00491-BIM Document 18 Filed 07/30/2007 Page 34 of 38

53

1 [REDACTED]
2 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I
3 LIVE IN [REDACTED] I'M A CHILDCARE WORKER/MENTAL HEALTH
4 WORKER WORKING WITH ABUSED -- PHYSICALLY AND SEXUALLY ABUSED
5 CHILDREN. I'M NOT MARRIED. I DON'T HAVE ANY KIDS. I DON'T
6 HAVE ANY EXPERIENCE AS A TRIAL JUROR. YES, I CAN BE FAIR.

7 THE COURT: THANK YOU, [REDACTED]

8 [REDACTED]
9 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE IN
10 [REDACTED] CALIFORNIA. THAT'S [REDACTED]

11 THE COURT: WELCOME.

12 PROSPECTIVE JUROR: I'M AN AIRCRAFT MECHANIC FOR
13 [REDACTED] I'M MARRIED. MY WIFE IS A
14 [REDACTED]

15 THE COURT: DO YOU HAVE ANY LAW ENFORCEMENT FUNCTION
16 AT ALL?

17 PROSPECTIVE JUROR: I'M [REDACTED]
18 I HAVE TWO ADULT BOYS. AND I HAVE NO EXPERIENCE IN
19 FEDERAL COURT. AND I CAN BE FAIR.

20 THE COURT: YOU CAN EVALUATE THESE CASES
21 INDEPENDENTLY? YOU'RE ACTING AS A CITIZEN AND NOT SO MUCH AS
22 A [REDACTED] DO YOU UNDERSTAND THAT?

23 PROSPECTIVE JUROR: YES.

24 THE COURT: [REDACTED] IS THE [REDACTED]
25 CALIFORNIA?

1 PROSPECTIVE JUROR: THAT'S ABOUT IT.

2 THE COURT: MY SON JUST WENT OVER TO THE [REDACTED]
3 [REDACTED] AT [REDACTED] WE DROVE HIM IN THE SUMMER. I WANTED
4 TO GET OVER THERE QUICKLY. SOMEBODY WARNED ME AFTERWARDS THAT
5 THEY'RE A VERY AGGRESSIVE [REDACTED] HIGHWAY PATROL.

6 PROSPECTIVE JUROR: THEY'RE OUT THERE.

7 THE COURT: CAN I USE YOUR NAME IN CASE I GET
8 STOPPED?

9 THANK YOU, [REDACTED]
10 [REDACTED]

11 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE
12 IN [REDACTED] I DO CONVENTION SERVICES AT THE [REDACTED] IN
13 [REDACTED] I'M NOT MARRIED. I HAVE NO KIDS. I DON'T HAVE ANY
14 EXPERIENCE AS A TRIAL JUROR. AND I COULD BE FAIR.

15 THE COURT: THANK YOU. WE'RE GLAD TO HAVE YOU.
16 [REDACTED]

17 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE IN
18 [REDACTED] MY WIFE AND I ARE BOTH RETIRED. WE HAVE [REDACTED]
19 ADULT CHILDREN.

20 THE COURT: WHAT WAS YOUR WORK BEFORE YOU RETIRED?

21 PROSPECTIVE JUROR: I WAS [REDACTED] YEARS AN EDUCATOR.

22 AND WE HAVE NINE GRANDCHILDREN. OUR IMMEDIATE ADULT
23 CHILDREN, ONE IS A SUCCESSFUL [REDACTED] ONE IS A
24 SUCCESSFUL [REDACTED] MY [REDACTED] [REDACTED] OF
25 [REDACTED] IN [REDACTED] AND PART OF [REDACTED] AND

1 UNFORTUNATELY, MY OTHER SON HAS [REDACTED] HE HAS BEEN
2 [REDACTED] FOR SEVERAL YEARS. I'VE HAD EXPERIENCE ON ONE
3 TRIAL. IT WAS A CRIMINAL CASE AT THE VISTA COURTHOUSE. AND I
4 CERTAINLY CAN BE FAIR.

5 THE COURT: THANK YOU.

6 [REDACTED] GOOD AFTERNOON.

7 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE IN
8 [REDACTED] I'M MARRIED. I HAVE [REDACTED] CHILDREN. ONE IS A
9 [REDACTED] MY WIFE IS A [REDACTED] IN [REDACTED]
10 [REDACTED] MY SON IS A [REDACTED] AT [REDACTED]
11 [REDACTED] I'M A CONTRACT OFFICER FOR THE NAVY WORKING AT THE
12 [REDACTED] AT [REDACTED] AND I'VE BEEN CALLED
13 THREE TIMES. I'VE NEVER BEEN IMPANELED ON A JURY. I'VE
14 STATED MY PRO POLICE VIEWS.

15 THE COURT: YOU CAN SERVE IN THIS FUNCTION AS A
16 GRAND JUROR OBJECTIVELY, LOOK AT THE EVIDENCE, AND ANSWER THE
17 QUESTIONS THAT I'VE REPEATED NOW SEVERAL TIMES: DO I HAVE A
18 REASONABLE BELIEF THAT A CRIME WAS COMMITTED? DO I HAVE A
19 REASONABLE BELIEF THAT THE PERSON THEY WANT ME TO INDICT
20 EITHER COMMITTED THE CRIME OR ASSISTED WITH IT?

21 PROSPECTIVE JUROR: YES, SIR.

22 THE COURT: THANK YOU, [REDACTED]
23 [REDACTED]

24 PROSPECTIVE JUROR: [REDACTED] I LIVE IN [REDACTED]
25 [REDACTED]

1 THE COURT: HOW IS THAT?

2 PROSPECTIVE JUROR: I LOVE BEING [REDACTED] I WOULD
3 HAVE WALKED TODAY, EXCEPT I THINK IT'S GOING TO RAIN.

4 I'M A CPA. I'M MARRIED. NO CHILDREN. AND I HAVE
5 NEVER SERVED ON A JURY. AND I CAN BE FAIR.

6 THE COURT: THANK YOU [REDACTED]
7 [REDACTED]

8 PROSPECTIVE JUROR: [REDACTED] I LIVE IN

9 [REDACTED] I DO NOT WORK. I'VE BEEN MARRIED FOR

10 [REDACTED] YEARS. MY HUSBAND IS RETIRED FROM THE [REDACTED]

11 BUT NOW IS A [REDACTED]
12 [REDACTED]

13 THE COURT: WHAT WAS HIS JOB WITH THE [REDACTED]
14 [REDACTED]

15 PROSPECTIVE JUROR: HE WAS A [REDACTED]

16 [REDACTED] BUT ALWAYS WORKED IN [REDACTED]
17 [REDACTED] [REDACTED]

18 THE COURT: WHAT DOES HE DO NOW AS A [REDACTED] WITH
19 THE [REDACTED]

20 PROSPECTIVE JUROR: HE'S A [REDACTED] EMPLOYEE. HE

21 WORKS IN [REDACTED] AND THEN, FOR EXAMPLE, [REDACTED] HE'LL

22 BE WORKING [REDACTED] AT THE [REDACTED]

23 THE COURT: LET'S HOPE THEY WIN THAT GAME.

24 PROSPECTIVE JUROR: YES.

25 THE COURT: I'M A LITTLE WORRIED ABOUT IT. I WAS

1 TORN WITH THE KANSAS CITY CHIEFS. I WAS HOPING -- I THOUGHT
2 THEY WOULD BE THE EASIER TEAM FOR THE CHARGERS TO BEAT.

3 PROSPECTIVE JUROR: WE HAVE [REDACTED] ADULT [REDACTED] AND
4 [REDACTED] GRANDCHILDREN. OUR [REDACTED] IS A [REDACTED] AND [REDACTED]
5 [REDACTED] FOR [REDACTED]
6 [REDACTED]. OUR [REDACTED] IS A [REDACTED] FOR
7 [REDACTED] COMPANY IN [REDACTED] I'VE BEEN CALLED, BUT NEVER
8 SERVED ON A JURY. YES, I COULD BE FAIR.

9 THE COURT: YOU SAY THAT MINDFUL OF EVERYTHING YOU
10 LEARNED ON THE TAPE AND ALL THE QUESTIONS AND ANSWERS THAT
11 HAVE BEEN GIVEN SO FAR?

12 PROSPECTIVE JUROR: YES.

13 THE COURT: [REDACTED]

14 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE
15 IN THE [REDACTED] I'M UNEMPLOYED AT THE CURRENT
16 TIME. I'M A HOUSEWIFE. I WAS A BOOKKEEPER FOR SEVERAL YEARS.
17 I'VE BEEN MARRIED FOR 19. MY SPOUSE IS A [REDACTED]
18 [REDACTED] WE HAVE [REDACTED] ADULT [REDACTED], BOTH WHO LIVE IN [REDACTED]
19 ONE WORKS IN [REDACTED] THE OTHER [REDACTED] I
20 THINK I WAS CALLED FOR TRIAL JURY OVER AT SUPERIOR COURT ABOUT
21 15 YEARS AGO, BUT I DON'T REMEMBER -- I DON'T THINK I WAS
22 IMPANELED, AT LEAST NOT THAT I REMEMBER. I LIKE THINGS TO
23 BALANCE OUT. I LIKE TO FIND HOW THINGS WORK. THAT'S WHY I
24 ENJOY WORKING WITH NUMBERS. I GREW UP ABOUT 20 MINUTES AWAY
25 FROM GILLETTE STADIUM.

1 THE COURT: YOU'RE WORRIED, TOO.

2

3 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE
4 IN [REDACTED] NOW. I JUST MOVED DOWN THERE FROM
5 [REDACTED] I WORK FROM HOME AS A MORTGAGE BROKER, AND I'VE
6 DONE THAT FOR [REDACTED] YEARS. NO KIDS. NEVER BEEN MARRIED. I HAVE
7 BEEN CALLED FOR JURY DUTY, BUT NEVER PULLED UP FROM MAIN
8 SELECTION. AND YES, I CAN BE FAIR.

9 THE COURT: THANK YOU.

10

11 PROSPECTIVE JUROR: [REDACTED] I LIVE IN
12 [REDACTED] I DON'T WORK. I'M MARRIED. MY HUSBAND WORKS FOR
13 [REDACTED] I HAVE [REDACTED] KIDS. NO EXPERIENCE. AND
14 I CAN BE FAIR.

15 THE COURT: WHAT DOES HE DO FOR THE [REDACTED]

16 PROSPECTIVE JUROR: HE'S [REDACTED]

17 THE COURT: WAS HE A [REDACTED]

18 PROSPECTIVE JUROR: NO. HE [REDACTED] S.

19 HE'S [REDACTED] FOR A MILLION YEARS. HE TRAVELS. WE LIVE [REDACTED]
20 AND HE JUST TRAVELS.

21 THE COURT: WHERE DO THEY DO [REDACTED]

22 PROSPECTIVE JUROR: [REDACTED]

23 THE COURT: YOU JOIN HIM SOMETIMES FOR [REDACTED]

24 [REDACTED]

25 PROSPECTIVE JUROR: YES.

1 THE COURT: THANK YOU.

2 [REDACTED]
3 PROSPECTIVE JUROR: MY NAME IS [REDACTED]
4 I LIVE [REDACTED] I WORK AT A CHILDREN'S BOOK STORE IN
5 [REDACTED] I'M MARRIED. MY HUSBAND WORKS [REDACTED] MY
6 ADULT CHILDREN, MY OLDEST [REDACTED] GRADUATED FROM [REDACTED] AS
7 A [REDACTED] HE'S A [REDACTED]
8 [REDACTED] MY SECOND [REDACTED] GRADUATED FROM [REDACTED] HE'S
9 AN [REDACTED] I'VE BEEN CALLED TO JURY DUTY, BUT
10 NEVER IMPANELED. I CAN BE FAIR.

11 THE COURT: LET ME TEST MY MEMORY WITH YOU.

12 "WHERE THE WILD THINGS ARE."

13 PROSPECTIVE JUROR: [REDACTED]

14 THE COURT: IS THAT BOOK STILL VERY POPULAR?

15 PROSPECTIVE JUROR: VERY. I CAN'T KEEP IT ON THE
16 SHELF. THAT'S WHAT EVERYBODY WANTS FOR A BABY GIFT.

17 THE COURT: [REDACTED] DO YOU USE THAT BOOK WITH
18 YOUR BOYS?

19 PROSPECTIVE JUROR: YES.

20 THE COURT: THANK YOU.

21 [REDACTED]

22 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE
23 IN [REDACTED] I'M A TEACHER AND A COACH
24 FOR ADOLESCENT KIDS; HEALTH, P.E., LA CROSSE. I'M MARRIED.
25 MY SPOUSE IS [REDACTED] HE'S GONE BACK TO

Case 3:07-cr-00491-BTM Document 18 Filed 07/30/2007 Page 61 of 69

60

1 SCHOOL. HE TINKERS IN THE [REDACTED] I DON'T HAVE ADULT
2 CHILDREN. I HAVE HAD EXPERIENCE IN CRIMINAL AND CIVIL CASES.

3 THE COURT: HOW MUCH EXPERIENCE? YOU'VE SAT ON BOTH
4 CRIMINAL AND CIVIL JURIES?

5 PROSPECTIVE JUROR: YES, SIR.

6 THE COURT: WHEN WAS YOUR MOST RECENT JURY
7 EXPERIENCE?

8 PROSPECTIVE JUROR: APPROXIMATELY FIVE YEARS AGO, A
9 CIVIL CASE.

10 THE COURT: LET ME PUT TO YOU THE QUESTION THAT I
11 PUT TO MANY WHO'VE HAD BOTH TYPES OF JURY EXPERIENCE.

12 YOU UNDERSTAND THE DISTINCTION HERE THAT THIS GRAND
13 JURY WOULD PERFORM A DIFFERENT FUNCTION FROM THE ONE --

14 PROSPECTIVE JUROR: I UNDERSTAND THAT.

15 THE COURT: AND [REDACTED] I WANT TO MAKE SURE I GOT
16 YOUR LAST ANSWER.

17 YOU CAN BE FAIR?

18 PROSPECTIVE JUROR: I CAN BE FAIR.

19 THE COURT: THANK YOU.

20 [REDACTED]
21 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE

22 IN [REDACTED] I'M A CATHOLIC DEACON AT A CHURCH [REDACTED]
23 [REDACTED] AND I'M ALSO PRESIDENT OF A COMPANY IN [REDACTED] THAT

24 MAKES [REDACTED] FOR [REDACTED] I'VE BEEN MARRIED FOR
25 [REDACTED] YEARS. MY WIFE IS A [REDACTED] SHE [REDACTED]

1 WORK. I HAVE [REDACTED] ADULT CHILDREN AND TWO GRANDCHILDREN. MY
2 [REDACTED] IS A [REDACTED] FOR [REDACTED] THE [REDACTED] MY
3 [REDACTED] DOES [REDACTED] ON [REDACTED] AT [REDACTED] AT
4 [REDACTED] AND HE'S PRESENTLY [REDACTED] AS WE DISCUSSED.
5 TEN YEARS AGO, I WAS A JUROR ON A CIVIL CASE. AND I HAVE TO
6 SAY I'M SOFT ON IMMIGRATION BECAUSE I'VE DONE VOLUNTEER WORK
7 WITH IMMIGRANTS IN THE FIELD. BUT I DO NOT THINK THAT WOULD
8 STAND IN MY WAY OF MAKING FAIR AND OBJECTIVE DECISIONS.

9 THE COURT: AS YOU HEARD ME EXPLAIN EARLIER TO ONE
10 OF THE PROSPECTIVE GRAND JURORS, WE'RE NOT ABOUT TRYING TO
11 CHANGE PEOPLE'S PHILOSOPHIES OR ATTITUDES HERE. THAT'S NOT MY
12 BUSINESS. BUT WHAT I HAVE TO INSIST ON IS THAT YOU FOLLOW THE
13 LAW THAT'S GIVEN TO US BY UNITED STATES CONGRESS. WE ENFORCE
14 THE FEDERAL LAWS HERE.

15 I THINK I CONFESSED ALOUD THAT THERE'S SOME OF THE
16 LAWS THAT I DISAGREE WITH THAT I HAVE TO ENFORCE. SO IT'S NOT
17 ABOUT ME OR MY PHILOSOPHIES. IT'S ABOUT PERFORMING A
18 CONSCIENTIOUS FUNCTION HERE AND SEEING IF THE FACTS SUPPORT AN
19 OUTCOME ONE WAY OR THE OTHER.

20 CAN YOU DO THAT?

21 PROSPECTIVE JUROR: I DON'T THINK I WOULD HAVE ANY
22 PROBLEM.

23 THE COURT: THANK YOU.

24 [REDACTED]
25 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I

1 LIVE IN [REDACTED] I HAVE WORKED AS A CHEMICAL ENGINEER, AS A
2 LAWYER, AS A SOCIAL WORKER, AND AS A LAW SCHOOL PROFESSOR.

3 THE COURT: WHAT WAS DISCIPLINE IN THE LAW? WERE
4 YOU AN INTELLECTUAL PROPERTY LAWYER?

5 PROSPECTIVE JUROR: NO. LABOR LAW AND PERSUASIVE
6 WRITING AT [REDACTED]

7 THE COURT: WHEN YOU PRACTICED; WHERE DID YOU
8 PRACTICE?

9 PROSPECTIVE JUROR: I WAS WITH CORPORATIONS IN
10 NEW YORK; [REDACTED] WHO BUILT THE [REDACTED]
11 [REDACTED] THAT I WAS INVOLVED IN. I WENT FROM THAT TO [REDACTED] WHO
12 BUILT THE [REDACTED] AND I WENT IN-HOUSE WITH [REDACTED]
13 [REDACTED] BUT I'VE ALSO BEEN WITH LARGE LAW FIRMS IN [REDACTED]
14 AND [REDACTED]

15 THE COURT: INTERESTING AND VARIED LEGAL CAREER,
16 HUH?

17 PROSPECTIVE JUROR: YES.

18 I'VE BEEN MARRIED FOR [REDACTED] YEARS TWICE AND NOT
19 DIVORCED. THAT ALSO ADDS UP TO [REDACTED] HAPPY YEARS. MY CURRENT
20 WIFE WORKS FOR THE [REDACTED] SHE [REDACTED]

21 [REDACTED]
22 INCIDENTALLY, SHE WAS [REDACTED] WHO [REDACTED]
23 [REDACTED] FROM HIS [REDACTED]
24 [REDACTED]

25 THE COURT: HER FIRST HUSBAND?

1 PROSPECTIVE JUROR: YES.

2 THE COURT: INTERESTING.

3 MR. [REDACTED] IS TALKING ABOUT THE CASE THAT
4 PROBABLY ALL OF US KNOW FROM TV, THE MIRANDA DECISION, WHERE
5 YOU HAVE TO TELL THE SUSPECTS BEFORE YOU QUESTION THEM "YOU
6 HAVE A RIGHT TO REMAIN SILENT. ANYTHING YOU SAY CAN AND WILL
7 BE HELD AGAINST YOU IN A COURT OF LAW."

8 HE WAS THE LAWYER FOR ERNESTO MIRANDA, HUH?

9 PROSPECTIVE JUROR: THAT WAS AN ACLU CASE.

10 WHEN [REDACTED]

11 [REDACTED]

12 THE COURT: HE GOT KILLED IN A BAR FIGHT IN PHOENIX
13 YEARS AFTER HE WAS VINDICATED.

14 PROSPECTIVE JUROR: THAT'S RIGHT. WHEN THE POLICE
15 CAME TO ARREST THE SUSPECT, THEY KNEW THEY HAD TO READ
16 SOMETHING TO HIM. THEY WEREN'T SURE WHAT. AND THE OTHER
17 POLICEMAN WHO WAS LOOKING THROUGH THE VICTIM'S -- MIRANDA'S
18 WALLET SAID, "LOOK HERE. I FOUND SOMETHING. I THINK THIS IS
19 IT." SO THE GUY WHO KILLED MIRANDA WAS READ HIS MIRANDA
20 RIGHTS FROM WHAT WAS IN MIRANDA'S WALLET.

21 THE COURT: AMONG THE MEMORABILIA THAT [REDACTED]
22 DID HE ACTUALLY AUTOGRAPH ANY OF THOSE CARDS?

23 PROSPECTIVE JUROR: I DIDN'T GO THROUGH IT. IT WAS
24 BOXES AND BOXES OF PAPERS.

25 THE COURT: I WOULD IMAGINE IN THIS DAY, THAT WOULD

1 BE SOMETHING THAT COULD FETCH MONEY ON EBAY.

2 PROSPECTIVE JUROR: THAT WAS PRE-EBAY.

3 I HAD [REDACTED] NATURAL CHILDREN, TWO OF WHOM ARE ALIVE.

4 ONE IS A [REDACTED] AND THE OTHER HAS A [REDACTED]

5 ONE OF MY CHILDREN WHO DIED WAS A LITIGATION ATTORNEY IN

6 [REDACTED] I HAVE [REDACTED] STEPCHILDREN. ONE IS A CRIMINAL

7 DEFENSE LAWYER IN [REDACTED] COUNTY, AND THE OTHER IS AN

8 [REDACTED] I WAS SEATED AS A CRIMINAL JUROR IN SUPERIOR

9 COURT. WE ACQUITTED. AND I CERTAINLY CAN BE FAIR.

10 THE COURT: THANK YOU, [REDACTED] I APPRECIATE
11 YOUR ANSWERS.

12 [REDACTED]
13 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I GO

14 BY [REDACTED] AFTER A TWO-YEAR MISSION FOR MY CHURCH, I WAS

15 FORTUNATE TO MARRY MY CHILDHOOD SWEETHEART. WE'VE BEEN

16 MARRIED FOR [REDACTED] YEARS. SHE'S A DOMESTIC GODDESS. WE HAVE [REDACTED]

17 CHILDREN. WE HAVE ONE [REDACTED] OUR [REDACTED] OLDER ARE MARRIED. OUR

18 [REDACTED] IS A STUDENT. OUR OTHER CHILDREN, ONE IS IN

19 [REDACTED] THE OTHER IS THE [REDACTED] WITH

20 [REDACTED] AS FAR AS MY LIVING, I'M AN ARCHITECT.

21 I'M [REDACTED] WE SPECIALIZE IN

22 [REDACTED] GENERALLY MORE TOWARDS INSTITUTIONAL WORK. WE DO

23 LIBRARIES FOR THE CITY OF [REDACTED] AND

24 [REDACTED] I HAVE EXPERIENCE IN TERMS OF TRIAL, BUT IT'S

25 LIMITED TO EXPERT WITNESS PRIMARILY ON ZONING ISSUES AND

Case 3:07-cr-00491-BTM Document 18 Filed 07/30/2007 Page 66 of 69

65

1 CONSTRUCTION DEFECT. I'VE PROBABLY BEEN INVOLVED IN SOMEWHERE
2 BETWEEN 13 AND 15 OF THOSE KINDS OF CASES. YOUR HONOR, I WILL
3 BE FAIR.

4 THE COURT: THANK YOU VERY MUCH, [REDACTED] I
5 APPRECIATE YOUR ANSWERS.

6 [REDACTED]
7 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I
8 LIVE IN [REDACTED] I'M A REALTOR, AND MY HUSBAND IS A
9 [REDACTED] WE HAVE ONE [REDACTED] WHO IS [REDACTED] I HAVE HAD
10 NO EXPERIENCE WITH BEING A JUROR. I CAN BE FAIR.

11 THE COURT: THANK YOU, [REDACTED]
12 ONCE AGAIN, I HAVE TO MAKE A DETERMINATION HERE OF
13 WHO MIGHT BE THE FOREPERSON AND DEPUTY FOREPERSON.

14 [REDACTED] HOW ABOUT YOU? ARE YOU UP TO THE
15 TASK OF SERVING AS THE FOREPERSON? LET ME TELL YOU ABOUT THE
16 ROLE OF A FOREPERSON.

17 PROSPECTIVE JUROR: I HAD [REDACTED]
18 AGO. I'M DOING FINE, BUT SOME DAYS --

19 THE COURT: I'M GOING TO APPOINT A DEPUTY
20 FOREPERSON, TOO. LET ME TELL YOU WHAT THE FUNCTION IS.

21 IT USED TO BE WHEN THE GRAND JURY DECIDED ON A GROUP
22 OF CASES AND DECIDED TO RETURN INDICTMENTS IN CASES, THE
23 ENTIRE GRAND JURY WOULD HAVE TO COME DOWN AND AFFIRM THAT
24 "THESE ARE OUR DECISIONS." A FEW YEARS AGO, FIVE, SIX, SEVEN
25 YEARS AGO, CONGRESS PASSED A LAW THAT SAID, "WE'LL ALLOW THE

Case 3:07-cr-00491-BTM Document 18 Filed 07/30/2007 Page 67 of 69

66

1 FOREPERSON OF THE GRAND JURY TO COME DOWN AND REPRESENT TO THE
2 COURT THE RESULTS OF GRAND JURY BALLOTING"

3 SO TYPICALLY, AS YOU HEARD ME MENTION, ONCE THE
4 GRAND JURY SESSION IS THROUGH FOR THE DAY, THE GRAND JURY
5 FOREPERSON OR DEPUTY FOREPERSON WILL COME DOWN AND ATTEST TO
6 THE COURT ALONG WITH THE APPROPRIATE PAPERWORK THE RESULTS OF
7 GRAND JURY'S WORK FOR THE DAY. THAT WOULD BE ABOUT IT.

8 THE OTHER THING IS THE U.S. ATTORNEY WOULD LOOK TO
9 YOU TO HELP SCHEDULE SESSIONS WITH THE GRAND JURY, TO GET A
10 CONSENSUS AMONG GRAND JURORS ABOUT BREAKS OR HOW LONG YOU WANT
11 TO GO, THAT TYPE OF THING. I DON'T WANT TO SAY IT'S NOT
12 IMPORTANT, BUT IT'S NOT GOING TO TAX YOUR RESOURCES MUCH MORE,
13 I DON'T THINK, THAN JUST SIMPLY SERVING AS A GRAND JUROR.
14 THERE IS A LITTLE MORE INVOLVED, AND YOU HAVE A TITLE.

15 PROSPECTIVE JUROR: I'D RATHER BE THE DEPUTY.

16 THE COURT: WELL, THEN, LET'S SWITCH PLACES.

17 [REDACTED] I WAS GOING TO CALL UPON YOU TO SEE IF
18 YOU'D BE INTERESTED IN BEING A DEPUTY. [REDACTED] WOULD
19 DEFER TO YOU AS THE FOREPERSON.

20 ARE YOU WILLING TO TAKE THAT ASSIGNMENT?

21 PROSPECTIVE JUROR: I WOULD BE.

22 THE COURT: I'LL APPOINT [REDACTED] AS THE FOREPERSON
23 OF THE GRAND JURY AND [REDACTED] AS THE DEPUTY FOREPERSON.

24 NOW, I MENTIONED THE POSSIBILITY THAT THERE MIGHT BE
25 PEOPLE THAT WANTED TO SWITCH BETWEEN THURSDAY AND FRIDAY.

COMPUTER-AIDED TRANSCRIPTION

1 PANELS. I'VE BEEN INFORMED THAT ONE OF THE GRAND JURORS FROM
2 THE FIRST PANEL, THE WEDNESDAY PANEL, WOULD PREFER TO SIT ON
3 THURSDAYS.

4 IS THERE ANYONE ON THIS THURSDAY PANEL -- OKAY. ALL
5 RIGHT.

6 LET ME TAKE FIRST THINGS FIRST.

7 TURNING MY ATTENTION BACK TO THE WEDNESDAY PANEL,
8 WHO IS IT THAT WOULD PREFER -- [REDACTED]

9 I'M GOING TO TRY TO GET YOU IN ORDER.

10 [REDACTED] SPOKE UP FIRST.

11 [REDACTED], [REDACTED], [REDACTED]

12 LET ME SEE IF I HAVE FOUR SIMILARLY SITUATED PEOPLE
13 ON THURSDAY THAT WANT TO GO TO WEDNESDAY.

14 MR. COOPER, I'M GOING TO SWITCH YOU WITH

15 [REDACTED]

16 [REDACTED] I'LL SWITCH YOU WITH [REDACTED]

17 [REDACTED] I'LL SWITCH YOU WITH [REDACTED]

18 AND [REDACTED] I'LL SWITCH YOU WITH [REDACTED]

19 [REDACTED]

20 IS THERE ANYONE ELSE WHO EITHER WANTS TO SWITCH OR
21 IS INDIFFERENT?

22 [REDACTED] I'LL SWITCH YOU WITH [REDACTED]

23 I LIKE TO BE ACCOMMODATING TO EVERYBODY. AND SEEING
24 NO MORE HANDS, I'M NOT GOING TO MAKE ANY MORE INQUIRIES.

25 [REDACTED] WILL YOU STAND.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[REDACTED]

I PROPOSE SWITCHING THE TWO OF THEM.

DO YOU WANT THEM TO SWITCH PHYSICALLY RIGHT NOW?

THE CLERK: NO.

THE COURT: [REDACTED] AND [REDACTED] THOSE TWO WILL
SWITCH.

[REDACTED] AND [REDACTED] WILL SWITCH.

[REDACTED] AND [REDACTED] WILL SWITCH.

[REDACTED] ON THE END AND [REDACTED]

WE'LL MAKE THOSE SWITCHES AT THE APPROPRIATE TIME.

LADIES AND GENTLEMEN, THOSE OF YOU WHO HAVE BEEN
SELECTED TO SIT ON THE GRAND JURY, IF YOU'LL STAND AND RAISE
YOUR RIGHT HAND, PLEASE.

--000--

I HEREBY CERTIFY THAT THE TESTIMONY
ADDUCED IN THE FOREGOING MATTER IS
A TRUE RECORD OF SAID PROCEEDINGS.

S/EVA OEMICK

7-3-07

EVA OEMICK
OFFICIAL COURT REPORTER

DATE